CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 256.

THE MERCHANTS NATIONAL BANK OF CINCINNATI, PLAINTIFF IN ERROR,

vs.

THERESA J. WEHRMANN, EXECUTRIX OF WILLIAM F. WEHRMANN, DECEASED, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED MAY 6, 1905.

(19,750.)

(19,750.)

SUPREME COURT OF THE UNITED STATES.

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THERESA J. WEHRMANN, EXECUTRIX OF WILLIAM F. WEHRMANN, DECEASED, ET AL.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 1, 1906.

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1 In the Supreme Court of Ohio.

THE STATE OF OHIO, *City of Columbus.*

To the Honorable the Supreme Court of the United States:

Pursuant to the command of your within Writ of Error, directed to us, we, under our Seal, distinctly and openly, the record and proceedings within mentioned, with all things concerning the same, before the Judges within named in a certain authenticated transcript to this Writ attached, send, as within we are commanded.

In witness whereof, I Lawson E. Emerson Clerk of the Supreme Court of Ohio, have set my hand and seal of said Court this First day of May, A. D., 1905.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON,
Clerk, Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

2 In the Supreme Court of Ohio.

No. 9039.

THE MERCHANTS' NATIONAL BANK OF CINCINNATI, a Corporation Organized under the Banking Laws of the United States and Doing Business in the City of Cincinnati, Plaintiff in Error,

vs.

THERESA J. WEHRMANN, Executrix of the Estate of William F. Wehrmann, Deceased; James C. Armstrong, Floris A. Sackett, and Isaac B. Matson, Executors under the Last Will and Testament of James M. Armstrong, Deceased; Margaret McArdle, Administratrix of the Estate of James McArdle, Deceased; Irvin M. Krohn, Stanley Krohn, and H. S. Livingston, Exec's of Moses Krohn, Dec'd; Sarah Feiss, Executrix of the Estate of Leopold Feiss, Deceased; Benjamin Pritz, W. W. Brown, Trustee; John Brokamp, Myron A. Spencer, Adam T. Voll, Peter G. Thompson, Joseph Taylor, Ella C. O'Donnell, Executrix of the Estate of Peter J. Dunn, Deceased; Michael Marcus, Frank B. McFarlan, J. Fred Woltz, Adeline A. Stubbs, M. Louise Armstrong, William H. Martin, Louise V. Steward, Caroline Bohnert, E. Reeder Donohue and C. H. Avery, Receivers of the Emperor Building & Loan Company, a Corporation Organized under the Laws of the State of Ohio; George Gunckel; Julia Murphy; The Fifth National Bank, a Corporation Organized under the Laws of the United States; Alfred G. Allen, C. B. Matthews, C. B. Matthews and Harlan Cleveland, Partners doing Business under the Firm Name of Matthews & Cleveland; C. B. Matthews, Harlan Cleveland, and Robert Bowler, Partners doing Business under the Firm Name of Matthews, Cleveland & Bowler; Jacob Shroder, James E. Robinson, Alice G. Hunt, John M. Jameson, Edward A. Sherman, David Spritz, Fannie Tuchfarber, Caroline Voll, Stella C. Voll, Clara

V. Jameson, Christine Emmeluth, Alice Jones, Clement
3 Bates, The *The* U. S. Grant Building & Loan Company, Harry Q. Cleneay, and Mary J. C. Johnstone, Executors and Trustees of the Estate of George W. B. Cleneay, deceased, and Joseph Cleneay, Rudolph Gohs, Henry W. Meier, Harry D. Brown, Gertrude Marcus, John W. Fisher, John M. Bolan, A. W. Williamson, Gertrude Spencer, Gertrude A. Spencer, George M. A. Spencer, Richard Hempel, The Second National Bank, Rebecca K. Brown, Anna L. McFarlan, Benjamin F. Erhman, William A. R. Tenney, Frederick Kinsinger, Administrator, Defendants in Error.

Petition for Writ of Error.

To the Honorable William Z. Davis, Chief Justice of the Supreme Court of the State of Ohio:

The petition of the Merchants National Bank of Cincinnati, a corporation organized under the banking laws of the United States, respectfully shows:

That heretofore, to-wit, on the 2nd., day of July, 1897, there was tried in the common pleas court, in the county of Hamilton, and State of Ohio, a case in which William F. Wehrman was plaintiff and your petitioner, among others, was defendant.

The petition of the plaintiff in said cause was a petition to wind up a partnership known as "The Elsmere Syndicate," and the said petition alleged that your petitioner herein was a member of said partnership, and liable as such, for the indebtedness of said partnership;

Upon the trial of said cause in said Common Pleas Court, your petitioner, both by its answer, and by motion made in said
4 cause, as appears from the record therein, set up that it was a corporation organized under the Banking Laws of the United States, and that as such corporation, it had no power, under such laws, to become liable for the indebtedness of the said "The Elsmere Syndicate."

That subsequently said Common Pleas Court, in spite of the objection so made by this petitioner, rendered a judgment against your petitioner on account of the indebtedness of the said The Elsmere Syndicate, on account of nine shares interest alleged to be owned by your petitioner in said syndicate, the amount of said judgment not being exactly stated therein;

That subsequently, the said case was appealed by your petitioner to the Circuit Court of Hamilton County, State of Ohio, and, upon the trial in said court, your petitioner claimed and showed that it was a corporation organized under the banking laws of the United States, and that, as such a corporation, it had no power to become liable for the indebtedness of the said The Elsmere Syndicate.

That subsequently, said Circuit Court decided said contention adversely to your petitioner, and held that your petitioner had power, under said banking laws, to become liable for the indebtedness of said The Elsmere Syndicate, and rendered a judgment against your

petitioner for $17,002.82, on account of the indebtedness of said The Elsmere Syndicate;

That subsequently, your petitioner filed a petition in error in this court to said judgment of said Circuit Court, and claimed in said petition that your petitioner was a corporation organized under the banking laws of the United States, and that as such a corporation, it had no power to become liable for the indebtedness of said The Elsmere Syndicate;

That subsequently, at the January Term, 1903, of this Court, this court reversed the said judgment of the Circuit Court of Hamilton County, and remanded the case to that court to ascertain the debts and liabilities of the Elsmere Syndicate, still remaining unpaid, and to render judgment against your petitioner for nine fortieths of said indebtedness;

That subsequently, at the January Term 1904, of the said Circuit Court of Hamilton County, said cause came on again for hearing, and your petitioner showed and alleged before said Circuit Court that your petitioner was a corporation organized under the banking laws of the United States, and as such a corporation had no power to become liable for any part of the indebtedness of said The Elsmere Syndicate;

That subsequently, at said term of said Circuit Court, said Circuit Court decided said contention adversely to your petitioner, and rendered judgment against your petitioner in the sum of $9,176.13, on account of the said indebtedness of the said the Elsmere Syndicate.

That thereupon, your petitioner filed a petition in error to said judgment of the circuit court, and in said petition in error claimed and showed to this court that your petitioner was a corporation organized under the banking laws of the United States, and as such had no power to become liable for any part of the indebtedness of said The Elsmere Syndicate;

That subsequently, this court decided said contention of your petitioner adversely to the claim of your petitioner, and held that your petitioner had power, under said banking laws to become liable for nine fortieths of the indebtedness of The Elsmere Syndicate, and rendered final judgment against your petitioner, affirming, in all respects, the said judgment of the Circuit Court of Hamilton County, Ohio;

Your petitioner further shows that the said judgment of this court was and is a final judgment in the highest court of the State of Ohio, in which a decision in said suit could or can be had.

Your petitioner further shows that a Federal question was made in said cause, to-wit, as hereinbefore set out, and that said judgment of this court was repugnant to and in conflict with the banking laws of the United States, and specifically in conflict with sections 5136, and 5137, of the Revised Statutes of the United States;

Wherefore your petitioner prays that a writ of error to said Supreme Court be allowed, that a citation be granted and signed; that the bond herewith presented be approved, and that, upon compliance with the terms of the statutes in such cases made and provided,

said bond and writ of error may operate as a supersedeas, that the errors complained of may be reviewed in the Supreme Court of the United States and the judgment aforesaid of said Supreme Court of Ohio be reversed.

THE MERCHANTS' NATIONAL BANK
OF CINCINNATI,
By Its Attorneys in Law and in Fact.
HERRON, GATCH, HERRON AND JAMES,
Attorneys and of Counsel for Petitioner.

The writ of error as prayed for in the foregoing petition is hereby allowed this 7th day of March, A. D. 1905, the writ of error to operate as a supersedeas and the bond for that purpose is fixed at the sum of $18,352.26.

Dated at Columbus this 7th day of March, A. D. 1905.

W. Z. DAVIS,
Chief Justice of the Supreme Court of the State of Ohio.

Filed in my office this 7th day of March, A. D. 1905.

LAWSON E. EMERSON,
Clerk of the Supreme Court of the State of Ohio.
By J. J. OBERMEYRE, *Deputy.*

7 [Endorsed:] No. 9039. In the Supreme Court of Ohio The Merchants' National Bank a corporation etc., Plaintiff in Error, *vs.* Theresa J. Wehrmann, Executrix, etc. *et al.*, Defendants in Error. Petition for Writ of Error. Filed Supreme Court of Ohio Mar. 7, 1905 L. E. Emerson Clerk. Herron, Gatch & Herron, Attorneys at Law.

8 In the Supreme Court of Ohio.

No. 9039.

THE MERCHANTS NATIONAL BANK OF CINCINNATI, a Corporation Organized under the Banking Laws of the United States and Doing Business in the City of Cincinnati, Plaintiff in Error,

vs.

THERESA J. WEHRMANN, Executrix of the Estate of William F. Wehrmann, Deceased; James C. Armstrong, Floris A. Sackett, and Isaac B. Matson, Executors under the Last Will and Testament of James M. Armstrong, Deceased; Margaret McArdle, Administratrix of the Estate of James McArdle, Deceased; Irvin M. Krohn, Stanley Krohn, and H. S. Livingston, Exec's of Moses Krohn, Dec'd; Sarah Feiss, Executrix of the Estate of Leopold Feiss, Deceased; Benjamin Pritz, W. W. Brown, Trustee; John Brokamp, Myron A. Spencer, Adam T. Voll, Peter G. Thompson, Joseph Taylor, Ella C. O'Donnell, Executrix of the Estate of Peter J. Dunn, Deceased; Michael Marcus, Frank B. McFarlan, J. Fred Woltz, Adeline A. Stubbs, M. Louise Armstrong, William H. Martin, Louise V. Stewart, Caroline Bohnert, E. Reeder Donohue, and C. H. Avery, Receivers of the Emperor Building & Loan Company, a Corporation Organized under the Laws of the

State of Ohio; George Gunckel, Julia Murphy, The Fifth National Bank, a Corporation Organized under the Laws of the United States; Alfred G. Allen, C. B. Matthews, C. B. Matthews and Harlan Cleveland, Partners Doing Business under the Firm Name of Matthews & Cleveland; C. B. Matthews, Harlan Cleveland, and Robert Bowler, Partners Doing Business under the Firm Name of Matthews, Cleveland & Bowler; Jacob Shroder, James E. Robinson, Alice G. Hunt, John M. Jameson, Edward A. Sherman, David Spritz, Fannie Tuchfarber, Caroline Voil, Stella C. Voil, Clara V. Jameson, Christine Emmeluth, Alice
9 Jones, Clement Bates, The *The* U. S. Grant Building & Loan Company, Harry Q. Cleneay, and Mary J. C. Johnstone, Executors and Trustees of the Estate of George W. B. Cleneay, Deceased, and Joseph Cleneay, Rudolph Gohs, Henry W. Meier, Harry D. Brown, Gertrude Marcus, John W. Fisher, John M. Bolan, A. W. Williamson, Gertrude Spencer, Gertrude A. Spencer, George M. A. Spencer, Richard Hempel, The Second National Bank, Rebecca K. Brown, Anna L. McFarlan, Benjamin F. Erhman, William A. R. Tenney, Frederick Kinsinger, Administrator, Defendants in Error.

Assignment of Errors.

Now comes the said plaintiff in error and respectfully submits that in the record, proceedings, decision, and final judgment of the Supreme Court of the State of Ohio, in the above entitled matter there is manifest error in this, to-wit:

First. The Court erred in its construction of the Banking Laws of the United States, and specifically in its construction of Sections 5136 and 5137 of the Revised Statutes of United States, relating to National Banks, and in holding that the plaintiff in error, a corporation organized under said banking laws of the United States, had power, under such laws, and specifically under said Sections 5136 and 5137, to become liable for any part of the indebtedness of the Elsmere Syndicate a partnership dealing in real estate;

Second. The court erred in its construction of the banking laws of the United States, and specifically in its construction of Sections 5136 and 5137, of the Revised Statutes of the United States relating to National Banks, and in holding that the plaintiff in error, a corporation organized under said banking laws, had power, under such laws, to become liable for that portion of the indebtedness of The Elsmere Syndicate, a partnership dealing in land, which in-
10 debtedness was incurred by said syndicate, prior to January 15, 1892.

Third. The court erred in rendering final judgment against the plaintiff in error, in confirming the judgment of the Circuit Court of Hamilton County, Ohio, which said judgment of the Circuit Court ordered the plaintiff in error to pay $9,176.13, as its share of the indebtedness of the Elsmere syndicate, a partnership dealing in land.

HERRON, GATCH, HERRON & JAMES.
Attorneys for Plaintiff in Error.

11 [Endorsed:] No. 9039 In The Supreme Court of Ohio. The Merchants National Bank, Plaintiff in Error, *vs.* Theresa J. Wehrmann, *et al.*, Defendants in Error. Assignment of Errors. Filed Supreme Court of Ohio Mar. 7 1905 L. E. Emerson clerk.

12 In the Supreme Court of Ohio.

No. 9039.

THE MERCHANTS NATIONAL BANK OF CINCINNATI, a Corporation Organized under the Banking Laws of the United States, and Doing Business in the City of Cincinnati, Plaintiff in Error,

vs.

THERESA J. WEHRMANN, Executrix of the Estate of William F. Wehrmann, Deceased; James C. Armstrong, Floris A. Sackett, and Isaac B. Matson, Executors under the Last Will and Testament of James M. Armstrong, Deceased; Margaret McArdle, Administratrix of the Estate of James McArdle, Deceased; Irvin M. Krohn, Stanley Krohn, and H. S. Livingston, Exec's of Moses Krohn, D'c'd; Sarah Feiss, Executrix of the Estate of Leopold Feiss, Deceased; Benjamin Pritz, W. W. Brown, Trustee; John Brokamp, Myron A. Spencer, Adam T. Voll, Peter G. Thompson, Joseph Taylor, Ella C. O'Donnell, Executrix of The Estate of Peter J. Dunn, Deceased; Michael Marcus, Frank B. McFarlan, J. Fred Woltz, Adeline A. Stubbs, M. Louise Armstrong, William H. Martin, Louise V. Stewart, Caroline Bohnert, E. Reeder Donohue, and C. H. Avery, Receivers of the Emperor Building & Loan Company, a Corporation Organized under the Laws of the State of Ohio; George Gunckel; Julia Murphy, The Fifth National Bank, a Corporation Organized under the Laws of the United States; Alfred G. Allen, C. B. Matthews, C. B. Matthews and Harlan Cleveland, Partners Doing Business under the Firm Name of Matthews & Cleveland; C. B. Matthews, Harlan Cleveland, and Robert Bowler, Partners Doing Business under the Firm Name of Matthews, Cleveland & Bowler; Jacob Shroder, James E. Robinson, Alice G. Hunt, John M. Jameson, Edward A. Sherman, David Spritz, Fannie Tuchfarber, Caroline Voll, Stella C. Voll, Clara V. Jameson, Christine Emmeluth, Alice Jones, Clement Bates,

13 The *The* U. S. Grant Building & Loan Company, Harry Q. Cleneay and Mary J. C. Johnstone, Executors and Trustees of the Estate of George W. B. Cleneay, deceased, and Joseph Cleneay, Rudolph Gohs, Henry W. Meier, Harry D. Brown, Gertrude Marcus, John W. Fisher, John M. Bolan, A. W. Williamson, Gertrude Spencer, Gertrude A. Spencer, George M. A. Spencer, Richard Hempel, The Second National Bank, Rebecca K. Brown, Anna L. McFarlan, Benjamin F. Erhman, William A. R. Tenney, Frederick Kinsinger, Administrator, Defendants in Error.

Bond on Writ of Error.

Know all men by these Presents, that we, The Merchants National Bank of Cincinnati, as principal, and The United States Fidelity

and Guaranty Company, of Baltimore, Maryland, as surety, are held and firmly bound unto the defendants in error herein, in the sum of Eighteen Thousand Three Hundred and Fifty Two and $\frac{36}{100}$ Dollars to be paid to the said obligees, and their successors, representatives, and assigns; to the payment of which well and truly to be made, we bind ourselves, and our successors, jointly and severally, by these presents.

Sealed with our seals and dated this 7th day of March A. D. 1905.

Whereas the above named plaintiff in error hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Ohio,

Now, Therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute his said writ of error to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

[Endorsed:] No. 9039. In the Supreme Court of Ohio. The Merchants National Bank, Plaintiff in Error, *vs.* Theresa J. Wehrmann, *et al.*, Def'ts in Error. Bond of Writ in Error.

[Seal of the Merchants National Bank of Cincinnati, O.]

14 THE MERCHANTS NAT'L BANK,
CINCINNATI, OHIO,
By W. W. BROWN, *Att'y.*

{Seal of the United States Fidelity & Guaranty Company, Incorporated 1896.}

THE UNITED STATES FIDELITY
AND GUARANTY CO.,
By HAROLD H. TALLMADGE,
Its Attorney in Fact.

15 [Endorsed:] No. 9039. In the Supreme Court of Ohio. The Merchants National Bank, a corporation etc. Plaintiff in Error *vs.* Theresa J. Wehrmann *et al.* Def'ts in Error. Bond on Writ of Error. Filed Supreme Court of Ohio Mar. 7 1905. L. E. Emerson, Clerk.

16 In the Supreme Court of Ohio.

No. 9039.

THE MERCHANTS NATIONAL BANK, Plaintiff in Error,
vs.
THERESA J. WEHRMANN ET AL., Defendants in Error.

Order Allowing Writ of Error.

The above entitled matter came on to be heard upon the petition of the plaintiff in error therein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Ohio,

and, upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter;

It is ordered that a writ of error be, and is hereby, allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby, approved.

W. Z. DAVIS,
Chief Justice of the Supreme Court of the State of Ohio.

17 [Endorsed:] No. 9039. In the Supreme Court of Ohio. The Merchants National Bank, Plaintiff in Error, *vs.* Theresa J. Wehrmann *et al.* Defendants in Error. Order Allowing Writ of Error. Filed Supreme Court of Ohio Mar. 7 1905 L. E. Emerson Clerk.

18 In the Supreme Court of Ohio.

No. 9039.

THE MERCHANTS NATIONAL BANK OF CINCINNATI, ETC., Plaintiff in Error,

vs.

THERESA J. WEHRMANN, Executrix, *et al.*, Defendants in Error.

Waiver of Citation.

We, the undersigned defendants in error in the above case, hereby waive the issue and service of citation on the writ of error heretofore allowed in the above cause.

19 THERESA J. WEHRMAN, *Executrix*,
By C. B. MATTHEWS, *Her Attorney.*
JAMES C. ARMSTRONG,
FLORIS A. SACKETT, AND
ISAAC B. MATSON, *Executors, etc.*,
By J. SHRODER, *Att'y.*
MARGARET McARDLE, *Administratrix*,
By OUTCOLT & FORAKER, *Her Att'ys.*
THE EXECUTORS OF THE ESTATE OF MOSES KROHN, D'C'D.,
By J. SHRODER, *Att'y.*
SARAH FEISS, *Executrix*,
By J. SHRODER, *Att'y.*
BENJAMIN PRITZ,
By WM. B. MAY, *Att'y.*
W. W. BROWN, *Trustee*,
By HERRON, GATCH, HERRON & JAMES, *Att'ys.*
JOHN BROKAMP,
By KRAMER & KRAMER, *His Att'ys.*
MYRON A. SPENCER,
By C. B. MATTHEWS, *His Att'y.*

ADAM T. VOLL,
By C. B. MATTHEWS, *His Att'y.*
PETER G. THOMPSON,
By C. B. MATTHEWS, *His Att'y.*
JOSEPH TAYLOR,
By HARPER & ALLEN, *Att'ys.*
ELLA C. O'DONNELL, *Executrix,*
By L. M. MONGAN, *Attorney.*
20 MICHAEL MARCUS,
By SAMUEL WOLFSTEIN, *Att'y.*
J. FRED WOLTZ,
By —— ——.
ADELINE A. STUBBS,
By SCHWAB & MERRILL, *Att'ys.*
M. LOUISE ARMSTRONG,
By SCHWAB & MERRILL, *Att'ys.*
WILLIAM H. MARTIN,
By GIDEON C. WILSON, *Att'y.*
LOUISE V. STEWART,
By WILSON & DE WITT, *Att'ys.*
CAROLINE BOHNERT,
By GIDEON C. WILSON, *Att'y.*
E. REEDER DONOHUE AND
C. H. AVERY,
Receivers of the Emperor Building & Loan Company,
By E. R. DONOHUE &
C. HAMMOND AVERY, *Attorneys.*
GEORGE GUNCKEL,
By KNIGHT & JONES, *Att'ys.*
JULIA MURPHY,
By GIDEON C. WILSON, *Att'y.*
THE FIFTH NATIONAL BANK,
By BOYCE & BOYD, *Att'ys.*
ALFRED G. ALLEN,
By HARPER & ALLEN.
C. B. MATTHEWS,
By C. B. MATTHEWS, *In Person.*
21 C. B. MATTHEWS AND
HARLAN CLEVELAND,
Partners Doing Business under the Firm Name of Matthews & Cleveland,
By HARLAN CLEVELAND, *Liq. Partner.*
C. B. MATTHEWS,
HARLAN CLEVELAND, AND
ROBERT BOWLER, *Partners, etc.,*
By HARLAN CLEVELAND, *Liq. Partner.*
JACOB SHRODER,
By J. SHRODER.
JAMES E. ROBINSON,
By J. SHRODER, *Att'y.*

ALICE G. HUNT,
By HARMAN, COLSTON, GOLDSMITH & HOADLY, *Att'ys.*
JOHN M. JAMESON,
By DAVID S. OLIVER, *Att'y.*
EDWARD A. SHERMAN,
By A. T. VOLL.
DAVID SPRITZ,
By DAVID S. OLIVER, *Att'y.*
FANNIE TUCHFARBER,
By A. T. VOLL.
CAROLINE VOLL,
By A. T. VOLL.
STELLA C. VOLL,
By A. T. VOLL.
CLARA V. JAMESON,
By A. T. VOLL.
CHRISTINE EMMELUTH,
By GIDEON C. WILSON, *Att'y.*
22 ALICE JONES,
By JAMES J. MUIR, *Attorney.*
CLEMENT BATES,
By CLEMENT BATES.
SECOND NATIONAL BANK,
By BYRON M. CLENDENING, *Attorney.*
HARRY D. BROWN AND
REBECCA K. BROWN,
By GEORGE A. TURRILL, *Attorney.*
WILLIAM A. R. TENNEY,
By CHAS. E. TENNEY, *Att'y.*
H. W. MEIER, SR.,
By CHRIS. VON SEGGERN.
A. W. WILLIAMSON,
GERTRUDE SPENCER,
GERTRUDE A. SPENCER,
GEORGE M. A. SPENCER,
By C. B. MATTHEWS.

23 [Endorsed:] In the Supreme Court of Ohio. #9039. The Merchants Nat'l Bank of Cin'ti *vs.* Wehrman *et al.* Waiver of citation Filed Supreme Court of Ohio Apr. 15 1905 L. E. Emerson, clerk.

24 In the Supreme Court of Ohio.

No. 9039.

THE MERCHANTS NATIONAL BANK OF CINCINNATI, ETC., Plaintiff in Error,

vs.

THERESA J. WEHRMANN, Executrix, ET AL, Defendants in Error.

Waiver of Citation.

I, the undersigned, defendant in error in the above case, hereby waive the issue and service of citation on the writ of error heretofore allowed in the above cause.

J. FRED WOLTZ.

25 [Endorsed:] In the Supreme Court of Ohio. #9039. The Merchants Nat'l Bank of Cin'ti *vs.* Wehrman *et al.* Waiver of Citation Filed Supreme Court of Ohio Apr. 15, 1905. L. E. Emerson, clerk.

26 In the Supreme Court of Ohio.

No. 9039.

THE MERCHANTS NATIONAL BANK OF CINCINNATI, a Corporation Organized under the Banking Laws of the United States, and Doing Business in the City of Cincinnati, Plaintiff in Error,

vs.

THERESA J. WEHRMANN, Executrix of the Estate of William F. Wehrmann, Deceased; James C. Armstrong, Floris A. Sackett and Isaac B. Matson, Executors under the Last Will and Testament of James M. Armstrong, Deceased; Margaret McArdle, Administratrix of the Estate of James McArdle, Deceased; Irvin M. Krohn, Stanley Krohn and H. S. Livingston, Executors of Moses Krohn, Deceased; Sarah Feiss Executrix of the Estate of Leopold Feiss, Deceased; Benjamin Pritz, W. W. Brown, Trustee; John Brokamp, Myron A. Spencer, Adam T. Voll, Peter G. Thompson, Joseph Taylor, Ella C. O'Donnell, Executrix of the Estate of Peter J. Dunn, Deceased; Michael Marcus, Frank B. McFarlan, J. Fred Woltz, Adeline A. Stubbs, M. Louise Armstrong, William H. Martin, Louise V. Stewart, Caroline Bohnert, E. Reeder Donohue and C. H. Avery, Receivers of the Emperor Building & Loan Company, a Corporation Organized under the Laws of the State of Ohio; George Gunckel, Julia Murphy, The Fifth National Bank, a Corporation Organized under the Laws of the United States; Alfred G. Allen, C. B. Matthews, C. B. Matthews and Harlan Cleveland, Partners Doing Business under the Firm Name of Matthews & Cleveland; C. B. Matthews, Harlan Cleveland and Robert Bowler, Partners Doing Business under the Firm Name of Matthews, Cleveland & Bowler; Jacob Shroder, James E. Robin-

son, Alice G. Hunt, John M. Jameson, Edward A. Sherman, David Spritz, Fannie Touchfarber, Caroline Voll, Stella C. Voll, Clara V. Jameson, Christine Emmeluth, Alice Jones, Clement
27 Bates, The U. S. Grant Building & Loan Company, Rudolph Gohs, Henry W. Meier, Harry D. Brown, Gertrude Marcus, John W. Fisher, John M. Bolan, A. W. Williamson, Gertrude Spencer, Gertrude A. Spencer, George M. A. Spencer, Richard Hempel, The Second National Bank, Rebecca K. Brown, Anna L. McFarlan, Benjamin F. Ehrman, William A. R. Tenney, Frederick Kinsinger, Administrator, Defendants in Error.

Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which is in the said Supreme Court of the State of Ohio, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Merchants National Bank of Cincinnati a corporation organized under the banking laws of the United States and Theresa J. Wehrman, Executrix of the Estate of William F. Wehrman, deceased; James C. Armstrong, Floris A. A. Sackett and Isaac B. Matson, Executors under the Last Will and Testament of James M. Armstrong deceased; Margaret McArdle, Administratrix of the Estate of James McArdle, deceased; Irvin M. Krohn, Stanley Krohn and H. S. Livingston, Executors of
28 Moses Krohn, deceased; Sarah Feiss, executrix of the estate of Leopold Feiss, deceased; Benjamin Pritz, W. W. Brown, trustee; John Prokamp, Myron A. Spencer, Adam T. Voll, Peter G. Thompson, Joseph Taylor, Ella C. O'Donnell, executrix of the estate of Peter J. Dunn, deceased; Michael Marcus, Frank B. McFarlan, J. Fred Woltz, Adeline A. Stubbs, M. Louise Armstrong, William H. Martin, Louise V. Stewart, Caroline Bohnert, E. Reeder Donohue and C. H. Avery, receivers of the Emperor Building & Loan Company, a corporation organized under the laws of the State of Ohio; George Gunckel; Julia Murphy, the Fifth National Bank, a corporation organized under the laws of the United States; Alfred G. Allen, C. B. Matthews, C. B. Matthews and Harlan Cleveland, partners doing business under the firm name of Matthews & Cleveland, C. B. Matthews, Harlan Cleveland and Robert Bowler, partners doing business under the firm name of Matthews, Cleveland & Bowler; Jacob Shroder, James E. Robinson, Alice G. Hunt, John M. Jameson, Edward A. Sherman, David Spritz, Fannie Tuchfarber, Caroline Voll, Stella C. Voll, Clara V. Jameson, Christine Emmeluth, Alice Jones, Clement Bates, the U. S. Grant Building & Loan Company, Rudolph Gohs, Henry W. Meier, Harry D. Brown, Gertrude Marcus, John W. Fisher, John M. Bolan, A. W. William-

son, Gertrude Spencer, Gertrude A. Spencer, George M. A. Spencer, Richard Hempel, the Second National Bank, Rebecca K. Brown, Anna L. McFarlan, Benjamin F. Ehrman, William A. R. Tenney, Frederick Kinsinger, administrator, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity;

29 or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said the Merchants National Bank of Cincinnati, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in his behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the fifth day of May 1905, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, the 6th day of April, in the year of our Lord, one thousand nine hundred and five.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

(Signed) B. R. COWEN,
Clerk of the Circuit Court of the United States
for the Southern District of Ohio.

Allowed by
WILLIAM Z. DAVIS,
Chief Justice of the Supreme Court of the State of Ohio.

30 [Endorsed:] No. 9039. In the Supreme Court of Ohio. The Merchants National Bank of Cincinnati, a corporation, etc., plaintiff in error, *vs.* Theresa J. Wehrmann, *et al.*, defendants in error. Writ of error. Filed Supreme Court of Ohio Apr. 15, 1905. L. E. Emerson, clerk. Herron, Gatch & Herron, attorneys at law.

31 In the Supreme Court of Ohio.

No. 9039.

THE MERCHANTS NATIONAL BANK OF CINCINNATI, Plaintiff in Error,
vs.
THERESA J. WEHRMAN, Executrix, ET AL., ETC., Defendants in Error.

Precipe for Transcript of Record.

To the Clerk of the Supreme Court of Ohio:

Please transcribe for record on writ of error to the Supreme Court of the United States the following pages of the printed records respectively designated herein as Record A and B. The first being filed in case 8133, and the second in case 9039, and no other pages:

Record A.

Page 22 to the middle of Page 26, being petition filed in the Common Pleas Court July 2, 1897;

From middle of page 28 to middle of page 29, being answer of Merchants National Bank filed November 13, 1897.

From bottom of Page 31 to middle of page 39, ending "Respectfully submitted, Clement Bates, Master. January 15, 1900;" being a portion of the report of the Special Master filed January 18, 1900.

Pages 247 to middle of Page 257 being Exhibits 1, 2, 3, and 4, down to Exhibit 5;

Page 343, Exhibit 6*a*, being form of the certificate of stock in the Elsmere Syndicate.

From bottom of Page 261 to middle of page 263 which is headed as follows: "By-Laws of The Elsmere Syndicate," and ends with the words "at all meetings each shareholder shall be entitled to
32 one vote for each share of stock held by him and a majority in interest so voting shall govern;" *i. e.* down to the words on Page 263, "(Page 10)."

From the bottom of Page 9 to the bottom of Page 19, being the minute 183 Judgment Entry, dated May 5, 1902, of the Circuit Court of Hamilton County.

From the top of Page 21 to the middle of Page 21, being the motion for a new trial of The Merchants National Bank filed May 6, 1902.

From the middle of Page 1 to the bottom of Page 3, being the petition in error in the Supreme Court of Ohio of The Merchants National Bank filed September 2, 1902.

Record B.

From the middle of Page 11 to the top of Page 12, being the judgment of the Supreme Court of Ohio entered October 27, 1903.

Page 81, Exhibit 56, being form of a deed given by the Trustees of the Elsmere Syndicate;

From the top of Page 82 to the middle of Page 83, Exhibit 58, being form of a Title Bond and Agreement by the Trustees of The Elsmere Syndicate.

From the middle of Page 83 to the middle of Page 84, Exhibit 63, being form of a deed given by the Trustees of The Elsmere Syndicate.

From the middle of Page 86 to the middle of Page 88, Exhibits 67, 68 and 74.

From the bottom of Page 89 to the top of Page 95 being marked "Exhibit-Building Association" and the other exhibits to the end of said Record.

From the middle of Page 13, to the bottom of Page 19 being the minute 375 of the Circuit Court of Hamilton County, entered April 8, 1904, and being the final decree in said court

From the middle of Page 20 to the middle of Page 21, being the motion for a new trial of The Merchants National Bank filed
33 April 9, 1904, and the entry overruling the same filed May 17, 1904.

From Page 1 to the bottom of Page 3, being the petition in error of The Merchants National Bank in the Supreme Court of Ohio, filed June 10, 1904;

The Judgment Entry and Mandate of the Supreme Court last entered in this cause, and all the papers and proceedings filed in this case since that time, *i. e.* all the entries and papers filed in the case since the last hearing on the second Petition in Error, including this precipe.

HERRON, GATCH, HERRON & JAMES,
Att'ys for the Merchants Nat'l Bank of Cin'ti.

April 14th 1905.

34 [Endorsed:] No. 9039. In the Supreme Court of Ohio. The Merchants National Bank of Cincinnati Plaintiff in Error *vs.* Theresa J. Wehrman, Executrix *et al.*, etc., Defendants in Error. Precipe for Transcript of Record. Filed Supreme Court of Ohio April 15 1905. L. E. Emerson, clerk.

35 Supreme Court of the State of Ohio.

State of Ohio, County of Hamilton, Court of Common Pleas.

WILLIAM F. WEHRMANN, Plaintiff,

vs.

FRANK B. MCFARLAN, MYRON A. SPENCER, JAMES MCARDLE, JR., William Bell, Leopold Feiss, Moses Krohn, Joseph Taylor, J. Fred Woltz, W. B. Kennedy, Ella C. O'Donnell, Executrix under the Last Will and Testament of Peter J. Dunn, Deceased; Benjamin Pritz, W. W. Brown, Trustee of the Merchants National Bank of Cincinnati, Ohio; The Merchants National Bank of Cincinnati, Ohio, a Corporation under the Laws of the United States of America; Richard Hempel, Trustee of the Second National Bank of Cincinnati, Ohio; The Second National Bank of Cincinnati, Ohio, a Corporation under the Laws of the United States of America; and James C. Armstrong, Floris A. Sackett, and Isaac B. Matson, Executors under the Last Will and Testament of James M. Armstrong, Deceased, and Margaret McArdle, Administratrix of the Estate of James McArdle, Deceased, Partners Doing Business in the State of Ohio under the Firm Name of Elsmere Syndicate, Defendants.

Petition.

(Filed July 2, 1897.)

Plaintiff represents to the Court that the defendants, Frank B. McFarlan, Myron A. Spencer, James McArdle, William Bell, Leopold Feiss, Moses Krohn, Joseph Taylor, J. Fred Woltz, W. B. Kennedy, Benjamin Pritz, W. W. Brown, Trustee of the Merchants National Bank of Cincinnati, Ohio; the Merchants National Bank of Cincinnati, Ohio, a corporation under the laws of the United States of America; Richard Hempel, trustee of the Second National Bank of Cincinnati, Ohio; The Second National Bank of Cincinnati, Ohio, a corporation under the laws of the United States of America; Peter J. Dunn, now deceased; James M. Armstrong, now deceased,
36 and James McArdle, now deceased, were and are partners doing business in the county of Hamilton and State of Ohio under the name of the Elsmere Syndicate, and that Peter J. Dunn is now deceased, and the interest of said Peter J. Dunn in said partnership is now held and represented therein by Ella C. O'Donnell (formerly Ella C. Dunn), executrix under the last will and testament of Peter J. Dunn, deceased; that James M Armstrong has departed this life and the interest of said James M. Armstrong in said partnership is now held and represented therein by James C. Armstrong, Floris A. Sackett and Isaac B. Matson, executors under the last will and testament of James M. Armstrong, deceased, and that James McArdle is now deceased, and the interest of said James McArdle in said partnership is now held and represented therein by Margaret McArdle, administratrix of the estate of James McArdle, deceased.

Plaintiff further says that on or about the 13th day of February, 1889, defendants and plaintiff formed what is known as a syndicate for the purpose of dealing in land, and that said syndicate, although the interests therein were represented by certificates given to each holder of an interest of a certain share or number of shares, in fact was not a corporation, but was a mere partnership in which certain persons held aliquot shares or interest; that shortly after the organization of this syndicate the members thereof obtained from George W. B. Cleneay and Joseph S. Cleneay, who were at that time the owners thereof in fee simple, a leasehold interest in a large quantity of land contiguous to the City of Cincinnati and also to the village of Norwood in Hamilton County aforesaid, which said lease required the payment of all taxes and assessments and of certain rent, to-wit, the sum of $— per annum, payable quarterly, and the said leasehold interest was vested in trustees for the use of the members of said syndicate, and for the purpose of making sales and deeds, the said lease containing a clause that the owner should join in a plat of said property, that individual lots might be sold and conveyed upon the payment to the said Cleneays of a certain
37 amount for such lot, and thereafter a plat was accordingly made subdividing said property into lots and laying out streets, which plat was recorded in the records of Hamilton County in Plat Book No. 8, Vol. 2 at pages 35 and 36.

The plaintiff further says that thereafter the said partnership (which was known as the Elsmere Syndicate) commenced to do business and to sell lots, and did sell a large number of lots and gave deeds for the same when they were purchased on deferred payments, and continued this business up to about the 15th day of June, A. D., 1896, when under foreclosure proceedings for back rents and unpaid taxes that had accrued, the said George W. B. Cleneay and Joseph S. Cleneay sold the interest of said syndicate in the said leasehold at judicial sale, in case No. 4875, in the Circuit Court of the United States, for the Southern District of Ohio, Western Division, and the said Cleneays purchased in the said leasehold interest, and thereafter the said syndicate or partnership had no further interest therein.

Plaintiff further says that for about three years prior to the sale, as aforesaid, the trustee of said syndicate had not been able to make any considerable number of sales of lots, whereas the expenses of maintaining the same were large, and the said syndicate members, as a syndicate, became largely involved in debt, and a large number of members of the syndicate were giving the matter no attention and declined to aid it in any manner with funds, and as a consequence the said partnership, as a partnership, became and continued to be wholly insolvent, and lost substantially all of its assets except as hereinafter mentioned; that certain other members of the syndicate being anxious to maintain the same until times should improve, thinking that thereby they would subserve the interests of all concerned, and that it would prevent the loss of the leasehold property, and would enable them thereafter to make sales and resume business, and with the full knowledge and consent of

all the members of said syndicate and at the express desire and request of the trustees thereof, to-wit: Myron A. Spencer, Frank B. McFarlan and James McArdle, Jr., and an advisory committee of which the vice-president of the Merchants National Bank
38 was one, raised certain moneys for the use and benefit of said syndicate by making their paper or endorsing their paper in the shape of promissory notes, which were used in bank and discounted and the proceeds applied as aforesaid, some of which said notes are still unpaid; and said loans were necessary to save said shareholders so-called from loss; that there is a large number of creditors of said partnership, but as to who they are and the amount owing to each and the manner of contracting all of said indebtedness, this plaintiff is not informed; that at the time of making said loans and contracting said debts the so-called shares owned by the members of this syndicate were forty in number and were owned by the following persons, each respectively owning the number of shares set opposite his name:

J. N. Armstrong	3	shares.
W. W. Brown, trustee Merchants' Nat'l Bank	9	"
William Bell	8	"
W. B. Kennedy	2	"
Leopold Feiss	1	"
Moses Krohn	1	"
Richard Hempel, Trus., Second Nat'l Bank	3	"
James McArdle	1	"
Peter J. Dunn	1	"
Benjamin Pritz	1	"
Myron A. Spencer	3	"
Joseph Taylor	1	"
William F. Wehrmann	5	"
J. F. Woltz	1	"

That the Merchants' National Bank prior to aforesaid insolvency had become the owner of the shares above mentioned as standing in the name of W. W. Brown, trustee, which shares said bank had taken from one Frank B. McFarlan, the former owner thereof, to secure and in payment of a debt due it from said McFarlan, contracted prior to the acquisition of said shares by said bank.

That the Second National Bank, prior to above mentioned insolvency had become the owner of the shares above mentioned as standing in the name of Richard Hempel, trustee, which shares said bank had taken from one John F. Woltz, the former owner thereof, to secure a debt due it from Woltz, contracted prior to the acquisition of said shares by said bank.

Plaintiff further alleges that the said syndicate has ceased to do business, has become insolvent, and has lost all of its property, except certain title bond claims upon which large payments
39 have been made, but their remains something due, and some two or three lots which have been conveyed by the said Cleneays in fee simple for the purpose of the syndicate upon receiving the amount due them; and the said syndicate has long ceased

to be able to prosecute its business, and should be dissolved, and a receiver appointed of its assets for the purpose of releasing them and paying the debts thereof, and an account should be taken between the members due and to whom and in what proportions it shall be paid by the members of said partnership.

Wherefore, this plaintiff asks that this court will state an account of the said partnership affairs, and will dissolve and wind up the same, and will find the amount of its debts, and will state an account between the members of said syndicate, and that in the meantime the court will appoint a receiver of the assets thereof in order that they may be turned into money and applied to the debts, and for such other and further relief as the plaintiff may be in equity entitled to.

C. B. MATTHEWS,
Attorneys for Plaintiff.

(Duly verified.)

40 *Answer of the Merchants National Bank.*

(Filed November 13, 1897.)

Now come the Merchants National Bank, and for answer to the petition herein, it admits that it is a corporation organized under the laws of the United States of America.

It denies that on or about the 13th day of February, 1889, or at any other time, this defendant formed any syndicate or partnership with the plaintiff, or became a member of any syndicate known as the Elsmere Syndicate.

As to the allegations of the petition in regard to the manner in which the said syndicate was formed, its constitution and the property subsequently acquired, this defendant, being ignorant in regard to the said facts, hereby denies the same, and demands strict proof thereof.

This defendant, upon information and belief, admits that the said syndicate did sell certain lots, but this defendant does not know the terms upon which the said lots were acquired by the purchasers thereof; this defendant upon information and belief, admits that at some date to this defendant unknown, the interest of the said Elsmere Syndicate, of whatever nature said interest was, was sold under judicial proceedings to George W. B. Cleneay and Joseph S. Cleneay.

In regard to the allegations in the petition as to the financial difficulties of the said syndicate, and as to the said manner in which it became involved in debt, and as to the efforts of certain members of the syndicate to retrieve its affairs, and of their borrowing certain moneys for the use and benefit of the said syndicate, this defendant knows nothing, and being ignorant thereof, hereby denies the same, and demands strict proof thereof.

This defendant denies that at any time it became the owner of any shares in the said syndicate, either by purchase from anybody or as security for the debt of anybody.

As to the allegations of the petition in regard to the insolvency of the said Elsmere Syndicate and the loss of all of its prop-
41 erty, this defendant knows nothing, and being ignorant thereof, hereby denies the same, and demands strict proof thereof.

Wherefore, this defendant, having fully answered, asks to be hence dismissed, with its costs.

HERRON, GATCH & HERRON,
Attorneys for Defendant.

(Duly verified.)

Report of Special Master.

(Filed January 18, 1900.)

Pursuant to the order of court, I published a notice for three weeks in the Court Index, calling for proof of claims against Elsmere Syndicate, and on the appointed day began the hearing pro and con on all issued undisposed of and as required to be found by the order of the court, and have herewith reported back to court all the testimony and findings.

1st. Assets.—I find there are no assets.

2d. Liabilities.—The following claims are not disputed and are allowed:

Alfred G. Allen, $64.41, due February 22, 1896.
C. B. Matthews, $100.00, due October 1, 1898.
Matthews & Cleveland, $75.00, due May 1, 1895.
Matthews, Cleveland & Bowler, $75.00, due March 1, 1898.
Shroder & Robinson, $360, due July 1, 1896.

The above are all for attorneys' fees on employment by the trustees for various necessary services.

Cleneay Claim.

1st. I find as a matter of law that John Woltz alone is bound by the covenants of the lease,—or at most, after the decree in the United States Court that Woltz and the trustees alone are bound, and not the partners, unless the latter became so by later acts.

2d. If any guaranty could be within the powers of trustees,
42 who had no right to borrow money, certainly a guaranty to further a mere scheme to induce the village of Norwood to pretend to order an improvement which was already made can not bind shareholders who did not participate in or sanction it.

As a large number did not participate, the claim is not a partnership debt, and I do not think it would be right in me to attempt to pass on the liability of participants; hence the claim is disallowed. I may say here, once for all, that the secretary's monthly reports sent to shareholders are not sufficient to create in them any responsibility not otherwise assumed.

William F. Wehrmann's estate claims on a judgment against him in favor of Merchants National Bank for $4,409.66, and interest from

June 2, 1897, rendered in case No. 109040 of the Common Pleas, and costs $52.51. Also, for $574.00; but as no evidence of date was given it may be called $500, with interest from February 28, 1896, (see page 29 of Record). These claims are for money used to pay ground rent, taxes, etc., and as no objection was made to them either in argument or briefs they may be allowed, except the item of costs, *i. e.*, $4,409.65, with interest from June 2, 1897, and $500.00 with interest from February 28, 1896.

Peter G. Thomson claims $1,600.00 on a demand note of October 24, 1890. The shareholders had unanimously resolved to advance $300.00 per share to assist the syndicate, and this was done; $100.00 per share was paid back, leaving $200.00 per share outstanding, being for $1,600.00 for the eight shares owned by him.

He also presents a claim for $350.00 with interest from April 18, 1893, on an advance to the trustees made December 13, 1892.

These claims are not disputed and are allowed, but only as off-sets against Mr. Thomson's liability.

Joseph Taylor's claim is also on the stockholders' loan of October
24, 1890, and is therefore allowed, not as a claim, but as an
43 off-set against his liability.

Fifth National Bank's Claim.

This claim arises out of M. A. Spencer's contribution or loan of $200.00 per share for three shares, the same as Joseph Taylor's and Peter G. Thomson's claims, and should be considered as an offset against M. A. Spencer's liability.

On November 18, 1895, the two trustees, of whom M. A. Spencer was one, took up M. A. Spencer's $600.00 claim by two notes, aggregating that amount with interest ($182.50) viz., one for $400.00 and one for $382.50, signed by the trustees to Spencer's order, and he transferred them to the bank as collateral to a debt of a greater amount of the M. A. Spencer Company and in consideration of an extension of time.

These new notes were unauthorized, for the syndicate owed Spencer nothing, and the notes being made by agents to one of their own number, carried on their face notice of their invalidity. This claim is disallowed.

Claim of E. R. Donohue and C. H. Avery, Receivers of Emperor Building and Loan Company.

On February 27, 1891, the trustees mortgages ten lots to the Emperor Building & Loan Company for $10,000.00 loan. A foreclosire suit was brought by the receivers of the building society in the Common Pleas Court (suit No. 114249) against the trustees and shareholders, in which all the latter, except Joseph E. Brown, John Woltz and Henry L. Taylor were served with summons.

On November 30, 1898, a decree was rendered finding there w due from the trustees, $7,778.65, with interest on $7,577.05 fro September 15, 1895, finding the mortgage to have been execut

and decreeing that unless this amount was paid within thirty days an order of sale should issue, and continuing the question of the liability of the other defendants until after sale. No sale has been effected.

I find that by the original deed of trust the trustees had
44 not been given power to bind the shareholders by mortgaging or borrowing and had no such implied power as partners in a concern of this kind; that a shareholders' regular monthly meeting, held December 1st, 1890, attended by Thomson, McFarlan, Fisher, Meier, Lippelman, Taylor, Kinsinger, Wehrmann, McArdle and Spencer, authorized the trustees to contract for loans not exceeding $20,000.00 and give mortgage to secure same.

On December 24, 1900, the trustees executed a mortgage for $10,000.00 to the Germania No. 2 Loan & Building Company, which was cancelled November 21, 24, 1894, and on February 27, 1891, this mortgage to the Emperor was made.

Assuming—for the minutes are silent—that these mortgage- were made under the above resolution, yet it cannot be said that shareholders present at a meeting can bind absentees for a personal responsibility not authorized by the partnership relation.

Whether they bind themselves individually is not a question with which we are concerned here. The claim is not a partnership debt and is disallowed.

Claims on Title Bonds and Deeds.

I find that the owners of title bonds and deeds are entitled to hold liable all defendants who were members of the syndicate at the date of execution of each and since. The amount of liability is the amount paid by each, with interest from the time of eviction, which is June 15, 1896, being the date of the United States Marshal's deed. But holders of deeds are not entitled to recover taxes paid by them, the same being in law offset by the use and occupation; and for the same reason holders of title bonds are not entitled to interest on payments prior to extinguishment of title.

I find that although by the terms of the trust deed the Cleneay title could have been extinguished at $500 per lot and conceding that the title bondholders could at all times have paid that amount to the Cleneays direct, and conceding that the Cleneays were at all times ready to convey at $500 per lot, yet the title bondholder
45 is not compelled to extinguish the paramount title. If he does not he can recover the money paid, but if he does, he can only recover the loss.

Hence, while I find that Julia Murphy received a title bond on July 31, 1889, and paid on it $740.00 up to October 5, 1895, her total payment was to have been $1,250.00. She acquired title by purchase from the Cleneays for $500.00, and hence is not entitled to recover anything.

William H. Martin received two title bonds calling for $1,250.00 each, one dated, September 9, 1889, on which he paid $1,027.00 to February 3, 1896, and on the other he paid $1,015.00 to the same

date. His daughter acquired the Cleneay title for $1,000.00, but I find that she was a member of his family and that at least part of the purchase money came from him, and the purchase was a family arrangement that could be charged to him, and hence he is entitled to recover only $510.00 with interest from June 15, 1896.

As to David Spritz's title bonds I find that he paid up to February, 1894, and then stopped, but had paid more than the one-third entitling him to a deed. Although such cessation of payment might be fatal to a claim for specific performance, yet in view of the then condition of the syndicate his continuance of payment would not have avoided the catastrophe, and the amount of his payments should not be forfeited. His claim is therefore allowed.

Following are the dates of execution of, and amounts paid upon, the other title bonds and deeds.

1889,	May 10.	The Misses Voll	$1540
	27.	E. A. Sherman	611
	27.	F. Tuchfarber	639
	28.	C. Bohnert	810
	28.	John M. Jameson	630
	June 1.	Louise V. Stewart	1135
	12.	David Spritz	1939
	22.	M. L. Armstrong	1110
	22.	A. A. Stubbs	1060
	August 12.	Alice G. Hunt	876
1890,	July 3.	Alice Jones	1250
	15.	C. Emmeluth	1250
	August 18.	George Gunckel	1000

As to the Debtors.

I find the following to be the original and successive shareholders of the syndicate, arranged chronologically:

46

No.	Date.	Name.	Transfer.
	1889.		
1.	April 1.	M. A. Spencer	
2.	" 1.	M. A. Spencer	Nov. 13, '93 to No. 78.
3.	" 1.	M. A. Spencer	M'ch 9, '93 to No. 75.
4.	" 1.	John Woltz	July 2, '89, to W. F. Wehrmann (See Min. p. 11.)
5.	" 1.	John Woltz	Sep. 10, '91, to No. 54.
6.	" 1.	John Woltz	Jun- 27, '90, to No. 42.
7.	" 1.	John Woltz	Tr. to W. F. Wehrmann, July 2, '89 (See Min. p. 11)
8.	" 1.	John Woltz	Tr. to W. F. Wehrmann, July 2, '89 (See Min. p. 11)

9.	"	1.	Josiah E. Brown	M'ch 14, '92 to No. 68.
10.	"	1.	R. Gohs	Jun- 27, '90 to No. 44.
11.	"	1.	R. Gohs	Jun- 27, '90 to No. 43.
12.	"	1.	R. Gohs	Jun- 27, '90 to No. 45.
13.	"	1.	Jno. Brocamp	Dec. 17, '90 to No. 51.
14.	"	1.	Jno. Brocamp	Jun- 27, '90 to No. 46.
15.	"	1.	Jno. Brocamp	M'ch 14, '92, to No. 69.
16.	"	1.	F. B. McFarlan	Jan. 15, '92 to No. 59.
17.	"	1.	F. B. McFarlan	Jan. 15, '92 to No. 60.
18.	"	1.	F. B. McFarlan	Jan. 15, '92 to No. 61.
19.	"	1.	F. B. McFarlan	Jan. 15, '92 to No. 62.
20.	"	1.	Jas. McArdle	
21.	"	1.	Jos. Taylor	
22.	"	1.	H. W. Meier	Dec. 8, '90, to No. 50.
23.	"	1.	H. H. Lippelman	M'ch 30, '94 to No. 86.
24.	"	1.	H. D. Brown	Sept. 10, '91 to No. 55.
25.	"	1.	Rebecca K. Brown	Jun- 27, '90 to No. 47.
26.	"	1.	Gertrude Marcus	Jun- 27, '90 to No. 48.
27.	"	1.	John W. Fisher	Jan. 29, '92 to No. 65.
28.	"	1.	John W. Fisher	Jan. 29, '92 to No. 66.
29.	"	1.	Anna L. McFarlan	Jan. 29, '92 to No. 67.
30.	"	1.	John M. Bolan	Dec. 24, '89 to No. 41.
31.	"	1.	Peter J. Dunn	
32.	"	1.	Woltz & Williamson	Jun- 27, '90 to No. 49
33.	"	1.	Philas J. Woltz	Dec. 17, '90 to No. 52.
34.	"	1.	Philas J. Woltz	Dec. 17, '90 to No. 53.
35.	"	1.	Gertrude Spencer	Sept. 10, '91 to No. 56.
36.	"	1.	Geo. M. A. Spencer	Sept. 10, '91 to No. 57.
37.	"	1.	Wm. F. Wehrmann	
38.	"	1.	H. L. Taylor	M'ch 14, '92 to No. 70.
39.	"	1.	Benj. F. Erhmann	May 2, '89, to John Woltz; June 21, '89 to A. T. Voll (See Min., p. 11.)
40.	"	1.	J. E. Brown and John Woltz	Sept. 10, '91 to No. 58.
41.	Dec. 24. 1890.		F. B. McFarlan	Jan. 15, '92 to No. 63.
42.	June 27.		P. G. Thomson	M'ch 27, '94 to No. 84.
43.	" 27.		P. G. Thomson	M'ch 27, '94 to No. 85.
44.	" 27.		P. G. Thomson	
45.	" 27.		P. G. Thomson	M'ch 27, '94 to No. 79.
46.	" 27.		P. G. Thomson	M'ch 27, '94 to No. 80.
47.	" 27.		P. G. Thomson	Mar. 27, '94 to No. 81.
48.	" 27.		P. G. Thomson	M'ch 27, '94 to No. 82.
49.	" 27.		P. G. Thomson	M'ch 27, '94 to No. 83.
50.	Dec. 8.		F. B. McFarlan	Jan. 15, '92 to No. 64.
51.	" 17.		Krohn, Feiss & Co.	Jan. 16, '95 to No. 64.
52.	" 17.		Krohn, Feiss & Co	Jan. 16, '95 to No. 90.
53.	" 17.		Krohn, Feiss & Co	Jan. 24, '93 to No. 72.
54.	Sept. 10.		C. Kinsinger	M'ch 9, '93 to No. 77.
55.	" 10.		C. Kinsinger	M'ch 9, '93 to No. 76.

56. " 10. C. Kinsinger.....Feb. 14, '93 to No. 74.
57. " 10. C. Kinsinger.....Feb. 2, '93 to No. 73.
58. " 10. C. Kinsinger.....Jun- 17, '92 to No. 71.

1892.

59. Jan. 15. W. W. Brown, trustee.....Aug. 27, '96 to No. 91.
60. " 15. W. W. Brown, trustee.....Aug. 27, '96 to No. 92.
61. " 15. W. W. Brown, trustee.....Aug. 26, '96 to No. 93.
62. " 15. W. W. Brown, trustee.....Aug. 27, '96 to No. 94.

47

1892.

63. Jan. 15. W. W. Brown, Trustee.....Aug. 27, '96 to No. 95.
64. " 15. W. W. Brown, Trustee.....Aug. 27, '96 to No. 96.
65. " 15. W. W. Brown, Trustee.....Aug. 27, '96 to No. 97.
66. " 15. W. W. Brown, Trustee.....Aug. 27, '96 to No. 98.
67. " 15. W. W. Brown, Trustee.....Aug. 27, '96 to No. 99.
68. M'ch 14. Richard Hempel.....
69. " 14. Richard Hempel.....
70. " 14. Richard Hempel.....
71. June 15. William Bell.....

1893.

72. Jan. 24. Benj. Pritz.....
73. Feb. 2. Wm. Bell.....Aug. 27, '94 to No. 87.
74. " 14. Wm. Bell.....Aug. 27, '94 to No. 88.
75. M'ch 9. J. M. Armstrong.....
76. " 9. J. M. Armstrong.....
77. " 9. J. M. Armstrong.....
78. Nov. 13. W. A. R. Tenney.....

1894.

79. M'ch 27. Wm. Bell.....
80. " 27. Wm. Bell.....
81. " 27. Wm. Bell.....
82. " 27. Wm. Bell.....
83. " 27. Wm. Bell.....
84. " 27. Wm. Bell.....
85. " 27. Wm. Bell.....
86. " 30. J. Fred Woltz.....
87. Aug. 27. W. B. Kennedy.....
88. " 27. W. B. Kennedy.....

1895.

89. Jan. 16. Moses Krohn.....
90. " 16. Leopold Feiss.....

1896.

91. Aug. 27. J. Fred Woltz and Wm. Bell...
92. " 27. J. Fred Woltz and Wm. Bell...
93. " 27. J. Fred Woltz and Wm. Bell...
94. " 27. J. Fred Woltz and Wm. Bell...
95. " 27. J. Fred Woltz and Wm. Bell...
96. " 27. J. Fred Woltz and Wm. Bell...
97. " 27. J. Fred Woltz and Wm. Bell...
98. " 27. J. Fred Woltz and Wm. Bell...
99. " 27. J. Fred Woltz and Wm. Bell...

I further find that Adam T. Voll's share (No. 39 on the above table) really belonged to Wm. F. Wehrmann, and hence that both are liable upon that share.

I further find that the shares taken in the name of Gertrude Marcus (No. 26), Rebecca D. Brown (No. 25) and Gertrude A. Spencer (No. 35) were taken in their names by their respective husbands without their knowledge and without subsequent ratification by them, and that the husbands are (although Mrs. Brown's answer admits ownership) alone liable, viz: Michael Marcus, Josiah Brown and Myron A. Spencer.

That W. W. Brown, Trustee, held the shares standing in his name as trustee for the Merchants National Bank; that the vice-president of the bank actively participated in the management of the
48 syndicate, and that said bank was the owner thereof and is liable.

That the shares in the name of Richard Hempel had been pledged by John Woltz to the Second National Bank and were afterwards transferred to said Hempel to hold for John Woltz.

That the share in the name of George M. A. Spencer was subscribed in his name without his consent by M. A. Spencer, and that he did not ratify this and M. A. Spencer is alone liable thereon.

That accordingly Gertrude Marcus, Rebecca D. Brown, Gertrude Spencer, George M. A. Spencer, the Second National Bank and W. W. Brown, trustee, should be dismissed.

That the estate of Peter G. Dunn had been wound up without presentation of any claim under the syndicate and that his executrix is not liable, except so far as any discovery of any future assets would make her so.

That the share in the name of W. A. R. Tenney was put in his name as security for a debt by M. A. Spencer and shortly thereafter was returned to him by M. A. Spencer, and that he so informed the Secretary of the syndicate, but no re-transfer was made on the books, and hence that he is entitled to recourse on M. A. Spencer for any expenditure he may be compelled to make as shareholder.

The following is a résumé of the creditors and debtors:

The first table being a list of creditors with original amounts, date from which interest begins, the amounts of interest to January 1st, 1900, and the totals to that date.

The second table is a list of the original shareholders in column with successive columns arranged by dates of transfer, the dates being at the head of the columns and the name of each transferee in the columns and opposite the transferrer's names.

The form of judgment recommended is submitted on a separate sheet.

Respectfully submitted,

CLEMENT BATES,
Special Master.

January 15, 1900.

49 EXHIBITS.

EXHIBIT "1."

This Indenture of Lease, made this 13th day of February, A. D. 1889, between Joseph S. and G. W. B. Cleneay of Hamilton County, Ohio, lessors, and John Woltz, of same place, lessee, witnesseth: That said lessors for and in consideration of the sum of sixty-five thousand ($65,000) dollars to them in hand paid, and of the rents herein reserved, and covenants and agreements hereinafter contained, and by the said lessee, his heirs, executors, administrators and assigns, to be paid and performed, do hereby grant, lease and demise unto the said lessee his heirs, executors, administrators and assigns, all the following described real estate, to-wit: The following described tract of land situated in section thirty-three (33) in Columbus Township, Hamilton county, Ohio, described as follows: "Commencing at the southeast corner of Regent avenue and Locust street; thence running east on the south line of said Locust street to a point where Locust street interse-ts a tract of land known as the 'Bolser Land;' thence south on the west line of the 'Bolser Land' to the Duck Creek road, thence in a southwesterly direction with the Duck Creek road to the south line of the land owned by the said lessors in section thirty-three (33); thence west on said south line to Regent Avenue; thence north on the east line of Regent Avenue to the place of beginning, containing one hundred and sixty (160) acres more or less;" it being understood and agreed by the parties hereto that the object of the foregoing description is to cover all the land owned by said lessors in said section thirty-three that lies east of Regent avenue; subject, however, to a contract made by lessors in regard to dedication of land for Floral avenue and to the rights of the Ohio & Northwestern Railroad.

To have and hold the same, together with the privileges and appurtenances thereunto appertaining and belonging, unto the said lessee, his heirs, executors, administrators and assigns, for and during the full term of ten (10) years next ensuing from the date of this lease, on the 12th day of February, A. D. 1899, fully to
50 be completed and ended. Lessors are to receive the revenues or rents arising from said land up to March 1, 1889. It is agreed that a mortgage at present outstanding on twelve (12) acres of land not exceeding twelve thousand ($12,000) dollars may remain on said property until such time as said lessee may require a deed for the land unencumbered. Lessors hereby agree to join said lessee in any plat that he may make of the premises hereby conveyed, or do any act required of them by said lessee to make a legal dedication of the streets so platted to public use provided said streets are to be afterwards included in the lots to be conveyed at the rate of two thousand ($2,000) — per acre, as stipulated below.

The said lessee, his heirs, executors, administrators and assigns, yielding and paying therefor, yearly, and every year during this demise, the sum of eight thousand dollars, payable in equal quarterly installments of two thousand ($2,000) dollars on the thirteenth days of the months of May, August, November and February, of each and every year during the term of this lease. And the said lessee,

for himself, and for his heirs, executors, administrators and assigns, does hereby covenant and agree to and with the said lessors, their heirs, and assigns, that he will well and truly pay unto the said lessors, their heirs and assigns, the yearly rent above reserved, at the days and times and in the manner above specified; and further, that he will, in addition to the rent aforesaid reserved, pay all taxes, rates, charges and assessments that may at any time during this demise, be levied, rated, charged or assessed on said premises or any part thereof, for any purpose whatsoever; and that for the better securing the payment of said rents, and the performance of the covenants herein contained, by the said lessee to be kept and performed, the said lessors, their heirs and assigns, shall have a first lien, paramount to all others, upon every right and interest of the said lessee, to or in the above described premises; and further, the said lessee, his heirs or assigns, will not commit or suffer any waste upon said premises, and that he will, at the expiration of said term, or sooner determination of this lease peaceably and quietly
51 deliver up said premises to the said lessors their heirs or assigns. Lessors are to pay all taxes up to and including the year 1888, and the lessee is to pay all taxes subsequent to that tax.

And the said lessors, for themselves and for their heirs, executors, administrators and assigns, further covenant and agree to and with the said lessee, his heirs, and assigns, that (all rents, taxes and assessments being paid, and all covenants, being performed by said lessee, as herein stipulated) said lessors will, at any time during the continuance of this lease, convey the said premises to said lessee, his heirs and assigns, by a good and sufficient deed of general warranty, with release of dower, upon the payment to them by said lessee, his heirs or assigns, of the sum of two hundred thousand ($200,000) dollars. It is further understood and agreed between the parties hereto that said lessors are to execute and deliver to said lessee or his assigns warranty deeds for all or any part of the herein described lands as the said lessors shall receive pay therefor and the said lessee may designate; provided, that at no time shall said lessors be required to execute deeds for more lots or parcels of land than they will have received pay for at the rate of two thousand ($2,000) dollars per acre, including streets, not including the said cash payment of sixty-five thousand ($65,000) dollars, and any such payments so made on any lots or parcels of land shall be credited on the purchase price of two hundred thousand ($200,000) dollars herein mentioned, and the ground rent is to abate in the proportion borne by said payments to said purchase price of two hundred thousand ($200,000) dollars. It is agreed that lessors are to complete all the streets now laid out on the Cleneay subdivision of forty acres adjoining on the west the tract herein leased, to macadamize and grade said streets and to lay plank walks on one side thereof similar to those now laid on Cleneay avenue in said subdivision, the same to be completed by July 1st, 1889, except Regent avenue, which lessors are to grade and pay one-half of cost of gravel and macadam thereon and lay a sidewalk on the west side thereof. Lessors are not to sell, lease or otherwise dispose of any lots remaining unsold in said forty acre tract for a lower figure than seventeen ($17)

52 dollars per front foot; while said lease is in force lots to be sold at this rate are to be the same size as already platted.

Provided, however, and these presents are upon these express conditions, that if, at any time, during this demise, the rent aforesaid reserved, or any part thereof, shall be in arrear, or unpaid, in all or in part, for the space of thirty (30) days after the same shall have become due and payable, and after demand of payment made personally on said premises, which demand of payment shall be equally good and effective, whether made on the day of payment, or any time afterward; or, if the said lessee, his heirs, executors, administrators or assigns, shall fail to pay all taxes, rates, charged and assessments, that may at any time during this demise be levied, rated, charged or assessed on said premises as the same may be required, or if the lessee, his personal representatives, heirs and assigns, shall faithfully to keep and perform any other covenant or agreement herein contained, and by him or them to be kept and performed, that then or in either such case, this lease shall cease, determine and be void; and it shall and may be lawful for the said lessors, their heirs, executors, adminstrators or assigns, to enter upon the said premises with the appurtenances, or any part thereof, in the name of the whole, and the same to occupy and repossess as though this demise had not been made, and the said lessee, his heirs and assigns, and all others claiming under him or them, from thence utterly to expel, remove and put out, anything in these presents contained to the contrary thereof notwithstanding.

And the said lessors, for themselves and for their heirs and assigns, do, hereby covenant and agree to and with the said lessee, his heirs and assigns, that, upon the payment of the rents and the performance of the covenants aforesaid, said lessee shall and may peaceably and quietly have and enjoy the aforesaid premises, with the appurtenances, for and during the term aforesaid, free from any let or hindrance by said lessors, their heirs or assigns, or any person or persons whatsoever.

In witness whereof, the said parties to these presents have hereunto set their hands, and to a duplicate hereof, the day and
53 year first above written, as also has Elizabeth H. Cleneay, wife of said G. W. B. Cleneay, who hereby releases her right and expectancy of dower in the said premises, the said Joseph S. Cleneay being an unmarried man.

JOSEPH S. CLENEAY.
GEORGE W. B. CLENEAY.
ELIZABETH H. CLENEAY.
JOHN WOLTZ.

Signed and acknowledged in presence of us:

KATE CLIFFORD,
As to Joseph S. Cleneay, George W. B. Cleneay and Elizabeth H. Cleneay.

W. S. ROWE,
As to Joseph S. Cleneay, George W. B. Cleneay and John Woltz.

H. Q. CLENEAY, As to All.

Endorsed on back: "Presented for record on the 13th day of February, 1889, at 4.50 o'clock p. m. Recorded February 14th, 1889, in Lease Book No. 92, page 104.

"GEORGE HOBSON,
County Recorder."

EXHIBIT "2."

Know all men by these presents: That John Woltz and Phillas J. Woltz, his wife, both of Hamilton County, in the State of Ohio, in consideration of one hundred thousand dollars to him paid by M. A. Spencer, James McArdle, Jr., and Frank B. McFarlan, trustees, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey to the said M. A. Spencer, James McArdle, Jr., and Frank B. McFarlan, trustees, their successors and assigns forever, "the following described tract of land situated in the section thirty-three (33) in Columbia Township, Hamilton County, Ohio, descrived as follows, viz: Commencing at the southeast corner of Regent avenue and Locust street; thence running east on the south line of said Locust street to a point where Locust street intersects a tract of land known as the 'Bolser land'; thence south on
54 the west side of the 'Bolser Land' to the Duck Creek road; thence in a southwesterly direction with the Duck Creek road to the south line of the land owned by the said lessors in section thirty-three (33); thence west on said south line to Regent Avenue, thence North on the east line of Regent Avenue to the place of beginning, containing one hundred and sixty (160) acres, more or less. It being understood and agreed by the parties hereto that the object of the foregoing description is to cover all the land owned by said lessors in said section thirty-three that lies east of Regent Avenue, subject, however, to a certain contract made by lessors in regard to dedication of land for Floral avenue and other rights of the Ohio & Northwestern Railroad."

The foregoing tract of land being the same as that conveyed to said John Woltz by Joseph S. and G. W. B. Cleneay by lease dated the 13th day of February, 1889, and recorded on the records of Hamilton County, Ohio, on page 104 in Lease Book No. 92. And all the estate, title and interest of the said John Woltz and Phillas J. Woltz, his wife, either in law or in equity, of, in and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof, to have and to hold the same to the only proper use of the said M. A. Spencer, James McArdle, Jr., and Frank B. McFarlan, trustees, their successors and assigns, forever. And the said John Woltz, for himself and for his heirs, executors and administrators, does hereby covenant with the said M. A. Spencer, James McArdle, Jr., and Frank B. McFarlan, trustees, their successors and assigns, that he is the true and lawful owner of the said premises and has full power to convey the same; that the title so conveyed is clear, free and unencumbered; and further, that he will warrant and defend the same against all claim or claims of all persons whomsoever, subject,

nevertheless, to all the rents, covenants, conditions and agreements, contained in a certain indenture of lease dated the 13th day of February, 1889, made by said Joseph S. Cleneay and G. W. B. Cleneay, to said John Woltz of the said tract of land hereinbefore described and conveyed, to be paid, kept and performed.

In Witness Whereof, the said John Woltz and Phillas J.
55 Woltz, his wife, who hereby releases her right and expectancy of dower in said premises, have hereunto set their hands this 15th day of February, in the year of our Lord one thousand eight hundred and eighty-nine.

JOHN WOLTZ.
PHILLAS J. WOLTZ.

Signed and acknowledged in presence of us:
I. S. GROSS.

Witness to signature John Waltz and Phillas J. Woltz,
J. E. BROWN.

STATE OF OHIO, *County of Hamilton, ss:*

Be it remembered that on the 16th day of February, in the year of our Lord one thousand eight hundred and eighty-nine, before me the subscriber, a notary public in and for said county, personally came John Woltz and Phillas J. Woltz, the grantors in the foregoing deed, and acknowledged the signing thereof to be their voluntary act, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal on the day and year last aforesaid.

J. E. BROWN,
[SEAL.] *Notary Public.*

Endorsed on back: "Presented for record on the 16th day of February, 1889, at 3:50 o'clock p. m. Recorded February 27, 1889, in Deed Book No. 668, page 1. "George Hobson, "County Recorder."

EXHIBIT "3."

This indenture made this 11th day of March, 1889, by and between Myron A. Spencer, Frank B. McFarlan, James McArdle, Jr., John Woltz, W. F. Wehrmann, H. L. Taylor, Gertrude Spencer, G. A. Spencer, Phillas J. Woltz, P. J. Dunn, J. M. Bolan, Anna L. McFarlan, J. W. Fisher, Gertrude Marcus, R. K. Brown, H. D. Brown, H. H. Lippelman, H. W. Meier, Joseph Taylor, John
56 Brokamp, Rudolph Gohs, J. E. Brown, A. W. Williamson, the same being all the members of the Elsmere Syndicate, parties of the first part, and Myron A. Spencer, Frank B. McFarlan and James McArdle, Jr., trustees, of the said Elsmere Syndicate, parties of the second part, all of said parties being residents of Hamilton County, State of Ohio, witnesseth:

Whereas, the said parties of the second part are the owners of a

certain leasehold estate as trustees, said property being hereinafter fully described and the same being recorded in Book 92, page 104, Hamilton County Records.

And, whereas, it is the intention of the said parties of the second part, (trustees) to plat, subdivide, lease, sell and convey the said property:

And whereas, the said parties of the first part are interested in the proceeds arising from the sale of said property and the issues, rents, and profits of the same;

And, whereas, it is the intention of the parties of the first part, and they do hereby declare, that the parties of the second part shall have full power and authority to plat, subdivide, improve sell, lease or convey said property by signing their names as trustees, and without our joining with them in any sale, lease or contract, and that they have the further right to collect all rents, profits and issues arising from and out of the sale of renting of said property.

Now therefore, this indenture witnesseth that the said parties of the first part, by this declaration of trust, do hereby declare that the said parties of the second part have all the rights, privileges and and powers above mentioned, and the said parties of the first part do hereby exempt from all liability any person or persons who may deal with the parties of the second part from any loss, if any should come, from the wrongful conversion of any funds in the hands of said parties, and in which we are interested. And the said parties of the first part, for themselves, their heirs and assigns, for the further protection of all the purchasers of said property, do in consideration of the premises above and in consideration of certificates designating and defining the number of shares in said syndicate to which
57 each of us is entitled, issued to us by the parties of the second part, the receipt of which is hereby acknowledged, hereby grant, bargain, sell and convey to the said parties of the second part, their successors or assigns, forever, all our interest in and to the rents, issues and profits arising from, as well as our interests in said property, which is hereby described as follows:

Situate in section thirty-three (33), Columbia township, Hamilton County, Ohio, commencing at the southeast corner of Regent avenue and Locust street; thence running east on the south line of said Locust street to a point where Locust street intersects a tract of land known as the "Bolser Land;" thence south on the west line of the "Bolser Land" to the Duck Creek road; thence in a southwesterly direction with the Duck Creek road to the south line of the land owned by Joseph S. Cleneay and G. W. B. Cleneay in section thirty-three; thence west on said south line to Regent avenue; thence north on the east line of Regent avenue to the place of beginning, containing one hundred and sicty acres, more or less, and all the estate, title and interest of the said parties of the first part, either in law or equity of, in and to the said premises, together with all the privileges and appurtenances to the same belonging and all the rents, issues and profits thereof. To have and to hold said rents, issues and -rofits and moneys derived from the sale of said property

in trust, nevertheless, to and for the several uses, intent and purposes hereinafter mentioned, namely:

First. To pay for surveys, plats, subdivisions and all other expenses for improvements necessary for the selling and leasing of said property.

Second. To pay the purchase money for said property as provided by said lease to the said parties of the second part at such times and in such installments as in said lease set forth.

Third. To pay the balance of said fund so realized to the holders of the said certificates so issued, by the parties of the second part, in proportion to the number of shares held by each.

This trust shall expire when all of said property has been leased or sold and the money for same has been distributed, as above
58 set forth.

And the said parties of the second part do hereby signify their acceptance of this trust, and do hereby covenant and agree to and with the said parties of the first part faithfully to discharge and execute the same according to the true intent and meaning of these presents.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

[SEAL.]	M. A. SPENCER.
[SEAL.]	F. B. McFARLAN.
[SEAL.]	J. W. McARDLE, Jr.
[SEAL.]	G. A. SPENCER.
[SEAL.]	GERTRUDE SPENCER.
[SEAL.]	JOSEPH TAYLOR.
[SEAL.]	JOHN M. BOLAN.
[SEAL.]	JOHN WOLTZ.
[SEAL.]	HENRY L. TAYLOR.
[SEAL.]	H. H. LIPPELMANN.
[SEAL.]	R. GOHS.
[SEAL.]	J. E. BROWN.
[SEAL.]	A. W. WILLIAMSON.
[SEAL.]	WM. F. WEHRMANN.
[SEAL.]	JOHN BROKAMP.
[SEAL.]	JOHN W. S. FISHER.
[SEAL.]	PETER J. DUNN.
[SEAL.]	REBECCA K. BROWN.
[SEAL.]	H. D. BROWN.
[SEAL.]	PHILLAS J. WOLTZ.
[SEAL.]	GERTRUDE MARCUS.
	Per M. MARCUS, *Attorney.*
[SEAL.]	H. W. MEIER.
[SEAL.]	ANNA L. McFARLAN.

Signed, sealed and acknowledged in the presence of us:
C. V. JAQUITH.
GEO. W. HARDING.
Witnesses.

(Duly acknowledged.)

Endorsed on back: "Transfer not necessary. Fred. Raine, Auditor; per Ziegler. Received for record December 16, 1889, at 4:25 p. m. Recorded December 17, 1889. Deed Book 684, page 362. "George Hobson, County Recorder."

EXHIBIT "4".

Agreement.

We, the undersigned, in consideration of the mutual agreements herein contained, severally agree, as follows:

First. That we will form a syndicate with a capital stock of
59 $320,000, divided into 40 shares, of par value of $8,000.00 each, and we will take the shares as subscribed by us.

Second. With said capital stock it is agreed to purchase a certain tract of land lying in Section No. 33, Columbia Township, Hamilton Co., Ohio, as per plat hereunto attached, said tract containing 160 acres, more or less, the purchase price for same to be $300,000.00, payable $100,000.00 cash, and the balance ($200,000.00) on ten-year 4% ground rent, with privilege of purchase at any time, interest payable quarterly.

Third. The balance of said capital stock, amounting to $20,000.00 shall be used for the improvement and development of said land, and for the expenses incidental to the management, control and sale thereof.

Fourth. The shares of said stock are to be paid for as follows: The sum of $300.00 per share immediately on signing this agreement; the sum of $2,300.00 immediately after all shares are taken; the sum of $400.00 in sixty days after all shares are taken; the balance of $5,000.00 on each share to be paid out of the proceeds of lots.

Fifth. After the cost of land, including the cost of making streets, advertising, etc., etc., shall have been paid out of the receipts for the sale of lots, then the receipts will be considered net profits, and shall be divided among the shareholders equally, share and share alike.

Sixth. Subscriptions to be binding only in case all the 40 shares are taken within fifteen days from date hereof. Otherwise, said first payment of $300.00 on each share to be returned.

Cincinnati, Ohio, January 25th, 1889.

Name.	No. shares.	Amount.	Paid.
M. A. Spencer	Three	24000	900
John Woltz	Five	40000	1500
J. E. Brown	One	8000	300
Rudolph Gohs	Three	24000	900
John Brokamp	Three	24000	900
James McArdle	One	8000	300
F. B. McFarlan	One	8000	300
Joseph Taylor & Co	One	8000	300
H. W. Meier	One	8000	300
H. H. Lippelmann	One	8000	300

	H. D Brown	One	8000	300
	Rebecca K. Brown	One	8000	300
60	F. B. McFarlan	One	8000	300
	Gertrude Marcus, Per M. Marcus, Att'y	One	8000	300
	J. E. Fisher	Two	16000	600
	F. B. McFarlan	One	8000	300
	Anna L. McFarlan, by F. B. McFarlan, Att'y	One	8000	300
	Jno. M. Bolan	One	8000	300
	Peter J. Dunn	One	8000	300
	Woltz & Williamson	One	8000	300
	Phillas J. Woltz	Two	16000	600
	Gertrude A. Spencer	One	8000	300
	Geo. M. A. Spencer	One	8000	300
	Wm. F. Wehrmann	One	8000	300
	F. B. McFarlan	One	8000	300
	H. L. Taylor	One	8000	300
	Benjamin F. Wehrmann	One	8000	300
	Brown and Woltz	One	8000	300

61 EXHIBIT "6*a*."

The Elsmere Syndicate.

Investment, $320,000. Paid-up, $120,000.

No. —. Non-assessable.

This is to certify that —— —— is the owner of a 1/40 interest in The Elsmere Syndicate. Transferable in person or by attorney upon the books of the Syndicate at its office in the City of Cincinnati, upon the surrender of this Certificate.

Witness our hands this — day of ——.

—— ——,
—— ——,
—— ——,
Trustees.

Countersigned.

—— ——,
Secretary and Treasurer.

For value received, —— —— sells to —— —— the interest above mentioned, and authorizes —— ——, attorney, to transfer the same on the books of the company.

In presence of

—— ——,
—— ——.

By-laws of The Elsmere Syndicate.

The Officers.

The officers shall consist of a President, Vice-president, Secretary, Treasurer and three trustees. The present trustees shall remain in office during the life of the Syndicate, unless impeached for wrong-doing, by a majority in interest of all the *un*mbers; or if one or more should resign or die, then the place or places, in any event, made vacant, to be filled by a majority in interest.

The President.

The president shall preside at all meetings of the Syndicate, and in his absence that duty shall devolve on the Vice-President.

62 The Secretary.

The secretary shall keep a record of all the meetings of the Syndicate and its trustees; keep the accounts of the Syndicate and perform such other duties as the Trustees may from time to time require of him. He shall receive a salary of $50 per month, payable monthly.

(Page 8.)

The Treasurer.

The Treasurer shall collect and receive all moneys of the Syndicate, and pay out the same only on the order in writing of a majority of the Trustees. He shall at all times keep his books open to the inspection of the Trustees, and shall render to them an itemized statement of his receipts and expenditures at least once in each and every month, and oftener if required, and shall perform such other duties as may be required of him by the Trustees. He shall give bond for the faithful discharge of his duties and proper accounting of monies coming into his hands in the sum of $50,000, with security to be approved by the Syndicate.

The Trustees.

The Trustees shall have all the powers given them by and through a "Declaration of Trust" heretofore made and signed; they shall sign all orders for the payment of money; make and execute all contracts of the Syndicate in its behalf; hold all official bonds given by officers and others to the Syndicate, and have general supervision over the affairs of the Syndicate, with power to employ counsel at a reasonable fee, and contract with agents for the sale of the Syndicate property. They shall receive a salary of $500 each, the year commencing May 1, 1889, unless the sales of property of the Syndicate during said year (beginning May 1, 1889 and ending

(Page 9.)

May, 1890) shall exceed $400,000, in which event their salary shall be $1,000 each instead of $500. Their salary for subsequent years shall be fixed at each annual meeting of the Syndicate.

Meetings of the Members.

63 Annual meetings of the Syndicate shall be held on the first Monday in April in each year, and such other meetings shall be held from time to time as in the opinion of the Trustees are necessary, or meetings may be called at any time on the request of shareholders representing at least one-third of the shares. The President, Vice-President, Secretary and Treasurer shall be elected at the annual meetings, and such other business may be disposed of at any and all meetings as may be presented. At all meetings each shareholder shall be entitled to one vote for each share of stock held by him and a majority in interest so voting shall govern.

64 *Transcript of Docket and Journal Entries in Circuit Court.*

(Filed in Supreme Court, September 2, 1902.)

May 5, 1902. Minute 183. Judgment entry.

This cause came on for hearing upon appeal from the Court of Common Pleas, upon the transcript, original papers, the report of the master and the evidence, proofs and exhibits offered by the parties, and arguments having been heard and the court having considered the various matters presented by the parties respectively, find:

1st. That what has been called herein the Elsmere Syndicate was a partnership formed for the purpose of taking the title by lease, with privilege of purchase of certain lands situated near Norwood, in this county, owned by George W. B. Cleneay and Joseph S. Cleneay, which was under lease to one John Woltz, who quit-claimed his title to Myron A. Spencer, Frank B. McFarlan and James McArdle, Jr. as trustees for said Syndicate, on or about the 16th day of February, 1889. And that the business of the said syndicate was to subdivide said land into lots, lay out and improve streets, and sell said lots for the profit of the members of the syndicate.

2d. That the interest of the partners in said partnership were represented by certificates of equal interest or shares, forty in number, numbered consecutively from one to forty and transferable from hand to hand on the books of the said company.

3d. That the partnership became insolvent, and it became impossible to carry on further the said business and said partnership was deprived of what remained of said leasehold premises by foreclosure and sale of same, and that it became necessary to file the petition in the court below to wind up the affairs, if any, and to compel the partners to liquidate the indebtedness thereof.

4th. That on June 15th, 1896, the interests in said partnership were held by the following named persons, in the proportion set opposite their names, to-wit:

Myron A. Spencer	Two shares.
William F. Wehrmann estate, Theresa J. Wehrmann, executrix	Five shares.
Merchants National Bank of Cincinnati, Ohio	Nine shares.
James Armstrong's estate, James C. Armstrong, Floris A. Sackett and Isaac B. Matson, executors	Three shares.
Moses Krohn	One share.
Leopold Feiss	One share.
Benjamin Pritz	One share.
Peter G. Thompson	One share.
Joseph Taylor	One share.
Richard Hempel	Three shares.
William Bell	Eight shares.
W. B. Kennedy	Two shares.
J. Fred Woltz	One share.
James McArdle's estate, Margaret McArdle, Adm'x	One share.
Peter J. Dunn's estate, Ella C. Donnell, Ex'x	One share.

being forty in all. That the above named William Bell and W. B. Kennedy are residents of Canada, and have not and could not have been served with process herein, and are not subject to the jurisdiction of the court. That the shares standing in the name of Richard Hempel were not his property, and he is not liable thereon, but one of said shares was conveyed to him by John Brokamp, party hereto, and one of the original subscribers to said syndicate, who is liable thereon. That the share standing in the name of Adam T. Voll, No. 39, was one of the five shares belonging to William F. Wehrmann, and that said Wehrmann was the owner thereof, and that his estate is liable for all assessments thereon, including the amount already paid up by Adam T. Voll, as hereinafter mentioned. That Myron A. Spencer and J. Fred Woltz, above named, and Peter J. Dunn's estate are insolvent and nothing can be made from them. That the others named, including John Brokamp, are liable for the debts of said partnership and the costs of this case, in proportion of the number of shares held by each respectively, but the right to contribution against said Myron A. Spencer and J. Fred Woltz and Peter J. Dunn's estate in favor of the other partners is preserved. That the shares standing in the name of W. W. Brown, trustee, are the shares of the Merchants National Bank, originally held by it as collateral, but transferred to it as owner when they were transferred to said Brown, that when so transferred the notes for which they had been held as collateral were surrendered, and the said shares were entered on the books of the bank as owned by the bank, and so reported to the United States Government, and the bank, through its vice-president, took part in the management of the said syndicate and in the effort to preserve its property from sacrifice and loss, and all this was done with the knowledge
66 and acquies-ence of the board of directors of said bank.

5th. That subject to certain deductions to be made hereinafter mentioned and provided for and including interest up to the

15th day of December, 1901, the indebtedness of said partnership is as follows:

Alfred G. Allen, including interest from February 22, 1896	$86.83
C. B. Matthews, including interest from October 1st, 1898	119.75
Matthews & Cleveland, including interest from May 1st, 1895	104.79
Matthews, Cleveland & Bowler, including interest from March 1st, 1898	90.04
Shroder & Robinson, including interest from July 1st, 1896	477.84
William F. Wehrmann estate, including interest from June 1st, 1897	5610.53
William F. Wehrmann estate, including interest from February 28, 1896	674.00
Peter G. Thompson, including interest from April 18th, 1893	531.12
Peter G. Thompson, including interest from October 24th, 1890	2669.60
Joseph Taylor, including interest from October 24, 1890	333.70
William H. Martin, including interest from June 1, 1896	2720.96
Christina Emmeluth, including interest from June 1, 1896	1665.62
Fifth National Bank	1068.11
The Emperor Building & Loan Co	10316.15
Total	$26469.04

The claim of Joseph S. Cleneay and George W. B. Cleneay is disallowed.

Upon such indebtedness the following named persons are liable for the amount set opposite their names:

Theresa J. Wehrmann, executrix	$5710.66
Merchants' National Bank	10279.12
James Armstrong's estate	3426.42
Moses Krohn	1142.14
Leopold Feiss	1142.14
Benjamin Pritz	1142.14
Peter G. Thompson	1142.14
Joseph Taylor	1142.14
Margaret McArdle, administratrix	1142.14
John Brokamp	200.00
Total	$26469.04

That there is another class of indebtedness of the said partnership to the following:

M. Louis Armstrong, including interest from June 15th, 1896	$1476.30
Caroline Bohnert, including interest from June 15th, 1896	1077.30
Alice G. Hunt, including interest from June 15th, 1896..	1165 08
John M. Jameson, including interest from June 15th, 1896	837.90
Edward A. Sherman, including interest from June 15th, 1896	812.63
David Spritz, including interest from June 15th, 1896...	2578.87

67

Louise V. Stewart, including interest from June 15th, 1896	$1509.55
Adeline E. Stubbs, including interest from June 15th, 1896	1409.80
Fanny Tuchfarber, including interest from June 15th, 1896	849.87
Mrs. Caroline Voll, Stella C. Voll and Mrs. Clara Voll Jameson, including interest from June 15th, 1896.....	2048.20
George Gunckel, including interest from June 15th, 1896	1330.00
Alice Jones, including interest from June 15th, 1896.....	1662.50
Tota-, with interest to Dec. 15, 1901	$16758.00

That upon the last mentioned schedule of indebtedness the following persons have paid the amounts set opposite their names:

Joseph Taylor	$910.00
Adam T. Voll	910.00
J. M. Armstrong's estate	2730.00
Moses Krohn	910.00
Leopold Feiss	910.00
Benjamin Pritz	910.00
McArdle estate	500.00
W. A. R. Tenney	400.00
Michael Marcus	500.00
H. W. Meier	500.00
Peter G. Thompson	1500.00
W. F. Wehrmann estate	1000.00
Total	$11680.00

That the creditors named on the second schedule of indebtedness receiving the above distribution was made as follows:

M. Louise Armstrong	$1029.47
Caroline Bohnert	751.47
Alice G. Hunt	812.24
John M. Jameson	548.29
Edward A. Sherman	564.67

David Spritz	1795.51
Louise V. Stewart	1052.02
Adeline A. Stubbs	983.10
Fanny Tuchfarber	592.64
Mrs. Caroline A. Voll, Stella C. Voll and Mrs. Clara Voll Jameson	1428.27
George Gunkel	927.45
Alice Jones	1459.31
Total	$11680.00

That the parties so paying have received a discharge from all liability upon the shares held by them, from the persons to whom said sums have been paid, to-wit, the creditors named in the second schedule of indebtedness.

That to the creditors receiving the above distribution there was due, with interest to July 1st, 1890, the sum of $15,425.55, but the voluntary payments by Tenney, Marcus and Meier of $400.00, $500.00 and $500.00 respectively, have reduced the second schedule of indebtedness to $14,025.55, which must be provided for by the solvent shareholders (23 shares in number). The above debt, to-wit, $14,025.55 should be apportioned among the shares at the
68 rate of $609.81 per share.

But of these the following shareholders have already paid in excess of that amount, and are entitled to contribution in the following amounts:

Joseph Taylor, one share, having paid $910.00, should receive as contribution	$300.19
Adam T. Voll, one share, having paid $910.00, should receive as contribution	300.19
Armstrong's estate, 3 shares, having paid in $2,730, should receive as contribution	900.57
Moses Krohn, 1 share, having paid $910, should receive as contribution	300.19
Leopold Feiss, — share, having paid $910, should receive as contribution	300.19
Benjamin Pritz, 1 share, having paid in $910, should receive as contribution	300.19
Peter G. Thompson, 1 share, having paid in $1,500 should receive as contribution	890.19
Total excess	$3291.71

The following shareholders, therefore, should pay in all, with interest from July 1st, 1900, to December 15th, 1901, and with interest thereafter, both by way of contribution and upon second schedule of debts:

The McArdle Estate, 1 share, paid $500, should pay into court	$119.42
The Wehrmann Estate, 5 shares, has paid $1,000, and 1 share satisfied by Voll, (see page 3), leaving due on second schedule and as contribution	1565.13
Merchants National Bank, 9 shares, having paid nothing, owes on the second schedule and by way of contribution	5968.47
Total to be paid into court as contribution and on second schedule	$7653.02

When $3,745.55 of said sum, with interest from July 1st, 1900, to December 15th, 1901, to-wit, $4,090.87 shall have been paid into court by the Merchants National Bank, the said sum so paid in shall be applied to the payment of the debts enumerated under the second schedule of debts, as follows:

M. L. Armstrong	$360.41
Caroline Bohnert	263.00
Alice G. Hunt	284.38
John M. Jameson	204.54
Edward A. Sherman	198.38
David Spritz	629.60
Louise V. Stewart	368.51
Adeline A. Stubbs	344.17
Fanny Tuchfarber	207.46
Caroline Voll, Mrs. Clara Voll Jameson and Mrs. Stella C. Voll	499.85
George Gunkel	324.70
Alice Jones	405.87
	$4,090.87

69 And thereafter what remains out of the said sum of $7,653.02, with interest, shall be applied by way of contribution to those shareholders who have paid in excess, so as above set forth, and all sums paid in shall be distributed pro rata to the creditors, except such as are paid as contribution, which shall be distributed to those entitled to contribution as herein found.

The share of stock held in the name of Adam T. Voll, and upon which the said Voll has already paid in $910, being in reality the property of the Wehrmann estate (one of said estate's five shares) the said Wehrmann estate, when it shall have paid Voll $910, with interest from July 1st, 1900, shall be credited with said payment hereinafter credited to said Voll, and shall be entitled to the contribution herein*to*fore set down as due Voll, viz: $300.19; and said Voll having brought suit in case numbered 118632, Hamilton Common Pleas Court, for the recovery of the $910 above mentioned, but no objection having been made to disposing of that matter herein, it is considered that said Adam T. Voll recover of Theresa J. Wehrmann, executrix, $1,005.55, with interest from December

15th, 1901, and the costs in said case numbered 118632. That in addition to the schedules of indebtedness above set out there is due the Clerk of this court for costs, including a fee, $221, to William F. Copeland for stenographic fees, the sum of $686.29, and the costs in the case of Stubbs *vs.* McFarlan ($57.79), in Armstrong *vs.* McFarlan ($56.79), in Stewart *v.* McFarlan ($63.12), Martin *vs.* McFarlan ($103.72), and Bohmert *vs.* McFarlan *et al.*, ($84.79), making in all $1,051.90, which is payable by the following named persons in the amounts set out opposite their names:

Theresa J. Wehrmann	$228.66
Merchants National Bank	411.60
Armstrong estate	137.20
Moses Krohn	45.74
Leopold Feiss	45.74
Benjamin Pritz	45.74
Peter G. Thompson	45.74
Margaret McArdle, administratrix	45.74
Joseph Taylor	45.74
	$1051.90

That there was further due as an allowance to Clement Bates as master and stenographic expenses, the sum of nine hundred and sixty and ninety hundredths ($960.90) dollars, upon which
70 there still remains due the sum of $610.90, Leopold Feiss, Moses Krohn, Benjamin Pritz and Joseph Taylor having paid said master $50, and the Armstrong estate having paid $150.

The balance of the said fee is due from the following named persons in the amounts set opposite their names:

Theresa J. Wehrmann, executrix	$190.91
Merchants National bank	343.63
Peter G. Thompson	38.18
Margaret McArdle, adm'r'x	38.18
Total	$610.90

But said amount due Clement Bates as master shall be held subject to the garnishment proceedings in the case of U. S. Grant Building & Loan Company *vs.* Clement Bates *et al.*, being case No. 118,982 on the docket of the common pleas court, Hamilton county, Ohio.

6th. The court further finds that under the different classes of creditors above named and giving credit to the estate of William F. Wehrmann, to Peter G. Thompson and to Joseph Taylor for the amounts owing to them, there is still due from each of the solvent partners, including the sums due by way of contribution, as aforesaid, in all, the sums hereinafter set opposite their names, respectively, and it is ordered, adjudged and decreed that they do pay the same with interest from December 15th, 1901, within thirty days from this date:

Theresa J. Wehrmann, executrix	$1410.83
Merchants National bank	17002.82
Armstrong estate	2663.05
Moses Krohn	887.69
Leopold Feiss	887.69
Benjamin Fritz	887.69
McArdle estate	1345.58
Joseph Taylor	533.99
John Brokamp	200.00
Total	$25839.24

and that in default of such payment execution is awarded therefor. All costs not yet taxed shall be paid one-twenty-third by each solvent share, and overplus in payments made as above to be applied toward said costs. But Leopold Feiss having pending this suit departed this life, and Sarah Feiss, his executrix, having been substituted for him as a party defendant hereto, and the cause revived in her name, the finding of the amount due from Leopold Feiss shall stand as a finding and decree against said Sarah Feiss, his executrix, and upon payment to the clerk of this court of each and
71 all of the amounts so found due from the respective partners, with interest from December 15th, 1901, each partner so paying and said Sarah Feiss, executrix, may have the finding and decree so found against him or her satisfied upon the record.

In the event of a deficiency by reason of the subsequent insolvency of any of said partners, such deficiency shall be paid by the remaining solvent partners in proportion to their stock, and execution is awarded therefor. But the amount due the Emperor Building & Loan Company shall not be paid until the land upon which said amount is secured by mortgage shall have been sold in foreclosure proceedings now pending, and the deficiency, if any ascertained, and then only said deficiency shall be paid in the proportions designated in the fourth paragraph hereof, and upon the payment of said sums so decreed to be paid to the clerk, said clerk shall make the distribution and payment as provided herein.

7th. The court further finds that at the time the indebtedness to the William F. Wehrmann estate was incurred, four lots were conveyed to him as security, being lots numbered 65, 68, 69 and 72 on the plat book of Elsmere, as recorded in plat book 8, Vol. 2, pages 35 and 36 of the Hamilton County Records, which lots he still holds, and which ought to be sold for the benefit of the creditors or the partners paying off the indebtedness. And it is ordered and adjudged that said four lots be sold and the proceeds thereof shall be divided between the partners paying in the case, in proportion to the shares held by them as above found in the Elsmere Syndicate. Attorneys' fees are disallowed.

8th. The following persons are dismissed from the case with their costs;

Rudolph Gohs, Henry W. Meier, Harry D. Brown, Gertrude Marcus, John W. Fisher, John M. Bolan, A. W. Williamson, Ger-

trude Spencer, Gertrude A. Spencer, George M. A. Spencer, Richard Himpel, the Second National Bank, Rebecca K. Brown, Anna L. McFarlan, Benjamin F. Ehrman, Wm. A. R. Tenney, Frederick Kinsinger, administrator, and the cross-petition of Joseph S. Cleneay and Harry Q. Cleneay, Mary J. C. Johnstone, executors and trustees of the estate of George W. B. Cleneay, deceased, are dismissed
72 at their costs; to all of which Theresa J. Wehrman, executrix, excepts.

The Merchants National Bank, Moses Krohn, Sarah Feiss, executrix; Benjamin Pritz, Joseph Taylor and James C. Armstrong, Floris A. Sackett and Isaac B. Matson, as executors of the estate of James M. Armstrong, deceased; Joseph S. Cleneay, individually and Harry Q. Cleneay and Mary J. C. Johnstone, as executors and trustees of the estate of George W. B. Cleneay, deceased; Peter G. Thompson, each severally except; and Theresa J. Wehrmann, executrix, Peter G. Thompson having filed amended motions for a new trial, and Harry Q. Cleneay and Mary J. C. Johnstone, executors and trustees, and Joseph S. Cleneay having filed a motion for a new trial, said motions are each overruled, and said Theresa J. Wehrmann, executrix, Peter G. Thompson each severally except thereto, and said Harry Q. Cleneay and Mary J. C. Johnstone, executors and trustees, and Joseph S. Cleneay also except to the overruling of their motion, and M. Louise Armstrong, Adeline A. Stubbs, Wm. H. Martin, Christine Emmeluth, Caroline Bohnert each except to so much of the above as dismissed Rudolph Gohs, Harry D. Brown, John W. Fisher, John M. Bolan, A. W. Williamson, Gertrude Spencer, Gertrude A. Spencer, Rebecca K. Brown, Anna L. McFarlan from this case, and also because of the refusal to give them judgments against each of the above defendants, and the defendants, the Merchants National Bank and John Brokamp, for the amount of their claims remaining unpaid. The motion for a rehearing by Merchants National Bank is overruled, to which it excepts.

May 7, 1902, motion to stay execution thirty days, etc., filed.
May 7, 1902, Motion for a new trial filed.
May 7, 1902, Motion for a new trial filed.
May 7, 1902, Motion for a new trial filed.
May 7, 1902, Motion for a new trial filed.
May 7, 1902, Motion for a new trial filed.
June 2, 1902. Minute 209: Entry overruling motion for a new trial; Merchants National Bank excepts.

73 *Motion for New Trial.*

(Filed May 6, 1902.)

Now comes the Merchants National Bank, one of the parties hereto, by Herron, Gatch & Herron, its attorneys, and moves the Court that the decision rendered herein be vacated and a new trial granted, for the following reasons:

1. Because the decision of the court is not sustained by sufficient evidence.

2. Because the decision of the court is contrary to law.

3. Because of errors of law occurring at the trial, and excepted to by the said the Merchants National Bank.

4. Because the said The Merchants National Bank is a corporation organized under the banking laws of the United States, and the decision rendered herein is to the effect that such a corporation has power to be or become the member of a partnership.

THE MERCHANTS NATIONAL BANK,
By HERRON, GATCH & HERRON,
Its Attorneys.

Petition in Error.

(Filed September 2, 1902.)

Supreme Court of Ohio.

No. 8133.

THE MERCHANTS NATIONAL BANK, a Corporation Organized under the Banking Laws of the United States and Doing Business in the City of Cincinnati, Plaintiff in Error,

vs.

THERESA J. WEHRMANN, Executrix of the Estate of William F. Wehrmann, Deceased; James C. Armstrong, Floris A. Sackett, and Isaac B. Matson, Executors under the Last Will and Testament of James M. Armstrong, Deceased; Margaret McArdle, Administratrix of the Estate of James McArdle, Deceased; Moses Krohn, Sarah Feiss, Executrix of the Estate of Leopold Feiss, Deceased; Benjamin Pritz, W. W. Brown, Trustee, John Brokamp, Myron A. Spencer, Adam T. Voll, Peter G. Thompson, Joseph Taylor, Ella C. O'Donnell, Executrix of the Estate of Peter J. Dunn, Deceased; Michael Marcus, Frank B. McFarlan, J. Fred Woltz, Adeline A. Stubbs, M. Louise Armstrong, William H. Martin, Louise V. Stewart, Caroline Bohnert, E. Reeder Donohue and C. H. Avery, Receivers of the Emperor Building & Loan Company, a Corporation Organized under the Laws of the
74 State of Ohio; George Gunckel, Julia Murphy, The Fifth National Bank, a Corporation Organized under the Laws of the United States; Alfred G. Allen, C. B. Matthews, C. B. Matthews and Harlan Cleveland, Partners Doing Business under the Firm Name of Matthews & Cleveland; C. B. Matthews, Harlan Cleveland, and Robert Bowler, Partners Doing Business under the Firm Name of Matthews, Cleveland & Bowler; Jacob Schroder, James E. Robinson, Alice G. Hunt, John M. Jameson, Edward A. Sherman, David Spritz, Fannie Tuchfarber, Caroline Voll, Stella C. Voll, Clara V. Jameson, Christine Emmeluth, Alice Jones, Clement Bates, The U. S. Grant Building & Loan Company, Harry Q. Cleneay, and Mary J. C. Johnstone, Executors and Trustees of the Estate of George W. B. Cleneay, Deceased, and Joseph Cleneay, Rudolph Gohs, Henry W. Meier, Harry D. Brown, Gertrude Mar-

cus, John W. Fisher, John M. Bolan, A. W. Williamson, Gertrude Spencer, Gertrude A. Spencer, George M. A. Spencer, Richard Hempel, The Second National Bank, Rebecca K. Brown, Anna L. McGarlan, Benjamin F. Erhman, William A. R. Tenney, Frederick Kinsinger, Administrator, Defendants in Error.

Now comes the plaintiff in error, the Merchants National Bank, a corporation organized under the banking laws of the United States, and doing business in the City of Cincinnati, and complains of the defendants in error and alleges that in a certain proceeding pending in the Circuit Court of the County of Hamilton, and State of Ohio, and numbered on the docket of that court 3387, wherein the defendant in error, Theresa J. Wehrmann, as executrix of the estate of William F. Wehrmann, deceased, was plaintiff and this plaintiff in error and others were defendants, a transcript of the docket and journal entries of which proceeding is filed herewith and marked Exhibit "A," and also the original papers in said proceeding, marked Exhibit "B," which case had come into said court on appeal from the Court of Common Pleas of Hamilton County, Ohio, certain proceedings were had, whereby a finding, decree and judgment was rendered against the plaintiff in error, on the 5th day of May, 1902, for the sum of $17,002.82, as more particularly appears from the said transcripts and original papers filed herewith.

The plaintiff in error further alleges that there is manifest error in said record and proceedings in the following respects, to-wit:

1st. The court erred in finding that the plaintiff in error was the owner of nine shares in the so-called Elsmere Syndicate.

2d. The court erred in finding that said shares had been transferred to the plaintiff in error as the owner thereof, and not merely as the pledgee thereof.

75 3d. The court erred in finding that the plaintiff in error was a partner in the partnership known as the Elsmere Syndicate.

4th. The court erred in its construction of the banking laws of the United States, and in its holding that the plaintiff in error, a corporation organized under the banking laws of the United States, had power, under such laws, to be and become a member of a partnership dealing in real estate.

5th. The court erred in its construction of the said banking laws of the United States in holding that under such laws the board of directors of the plaintiff in error had power, without the assent of the stockholders of the plaintiff in error, to cause the plaintiff in error to be or become a member of a partnership dealing in real estate.

6th. The court erred in finding that the board of directors of the plaintiff in error knew of or assented to the plaintiff in error becoming a member of a partnership dealing in real estate.

7th. The court erred in overruling the exceptions of the plaintiff in error to the master's report filed in said court.

8th. The court erred in overruling the motion of the plaintiff in error for a new trial.

9th. The court erred in decreeing and finding that the plaintiff in error should pay the said sum of $17,002.82.

10th. The court erred in not dismissing the plaintiff in error from the said case.

And there are other errors apparent upon the face of the record.

Wherefore, the plaintiff in error asks this Court to reverse said finding, judgment and decree of said Circuit Court against it, and that it may be restored to all it has lost by reason thereof.

HERRON, GATCH & HERRON,
Attorneys for the Plaintiff in Error.

(Duly verified.)

76 *Judgment of Supreme Court, January, 1903, Term.*

(Entered October 27, 1903.)

This cause came on to be heard upon the transcript of the record of the circuit court of Hamilton county, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said circuit court be, and the same hereby is, reversed; and this cause is remanded *to*, to the circuit court of Hamilton county, with instruction to proceed and ascertain the amount of debts and expenses of said Elsmere syndicate remaining unpaid after the application of the assets of said syndicate to the payment of its debts, including interest, and then render judgment against said plaintiff in error for nine-fortieth parts of said debts and interest remaining so unpaid, and also render judgment against said plaintiff in error for nine-fortieth parts of the costs.

It is further ordered and adjudged by this court that the cross-petition in error heretofore filed herein by Joseph S. Cleneay, Harry Q. Cleneay and Mary J. C. Johnstone, executors and trustees of the estate of George W. B. Cleneay, deceased, be, and the same is hereby, affirmed.

And it is further ordered and adjudged that said plaintiff in error recover from the said defendants in error, its costs in and about this suit expended in this court, taxed at $——.

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EXHIBIT 56.

Deed.

Trustees of Elsmere Syndicate to George Gunckle.

Know all men by these presents: That M. A. Spencer, F. B. McFarlan and James McArdle, Jr., as trustees of the Elsmere Syndicate, grantors, in consideration of one thousand dollars to them paid by George Gunckle, grantee, do hereby grant, bargain, sell and convey to the said grantee, his heirs and assigns forever, the following described real property situate in section thirty-three (33), Columbia Township, Hamilton County, State of Ohio, to-wit: Lot No. Three hundred and five (305) of Elsmere, as shown on a plat made by

said trustees and J. S. and G. W. B. Cleneay, and recorded in Plat Book No. 8, Vol. 2, at pages 35 and 36 of the Land Records of Hamilton County, being a subdivision of the tract of land situated in said Hamilton County and conveyed by John Woltz and wife to said grantors by deed recorded in Book 668 at page 1 of said Land Records, but subject to the express condition that before the year 1900 no building shall be erected thereon costing less than $2000, nor so that any part thereof may be nearer than thirty feet to the front line of said lot, and all the estate, right, title and interest of the said grantors in and to said premises. To have and hold the same with all the privileges and appurtenances thereunto belonging to said grantor, his heirs and assigns, forever.

And the said grantors for themselves and successors and assigns do hereby covenant and warrant that the title so conveyed is clear, free and unincumbered, and that they will defend the same against all lawful claims of all persons whomsoever.

In witness whereof, the said grantors have hereunto set their hands this eighteenth day of August, in the year A. D., eighteen hundred and ninety.

78

M. A. SPENCER,
JAMES McARDLE, Jr.,
F. B. McFARLAN,
Trustees of the Elsmere Syndicate.

Signed and acknowledged in presence of us:
GEO. M. A. SPENCER,
To Spencer.
JOHN COLLINS,
To McArdle, Jr.
C. V. JAQUITH,
To McFarlan.
J. E. BROWN,
To all.

(Duly acknowledged.)
Received for record August 28, 1890, at 3:20 o'clock, p. m.

Exhibit 58.

Elsmere, *Hamilton County, Ohio.*

Title Bond and Agreement.

Know all men by these presents: That M. A. Spencer, F. B. McFarlan, and Jas. McArdle, Jr., Trustees of the Elsmere Syndicate (Hereinafter called the Trustees), are firmly held and bound unto Caroline Bohnert of Cincinnati, Ohio, (hereinafter called the purchaser), in the sum of Twelve Hundred and Fifty Dollars, to the payment of which they bind themselves, their successors and assigns.

The condition of this obligation is such that whereas, said Trustees have agreed to convey to the purchaser, the following described

lot of land, to-wit: Lot No. 165 of Elsmere, as recorded in Plat Book No. 8, Vol. 2, at pages 35 and 36 of the land records of Hamilton County, State of Ohio, situate in section 33, Columbia Township, Hamilton County, Ohio, the said lot to be conveyed in fee simple by a good and sufficient deed of warranty, and the title thereto to be free from all encumbrances, but upon the express condition that, before the year 1900, no building shall be erected thereon costing less than $2,500, nor so that any part thereof may be nearer than thirty feet to the front of said lot.

And said trustees have agreed to grade, macadamize and lay sidewalks and plant shade trees on the street on which said lot abut-, and to pay the taxes to become due on said lot before the delivery of the deed there-for, as herein provided, and to deliver such deed to the purchaser after payment of one-third of the purchase money, the balance to be secured by mortgage on the premises and paid in installments as hereinafter specified. And said trustees have agreed to allow the purchaser a credit of ten per cent. if one-half of
79 the purchase money is paid to them within sixty days from the date hereof, and a credit of twenty- per cent. if all the purchase money is paid within said time.

And whereas, in consideration of the foregoing agreement, the purchaser has agreed with said Trustees to pay to them, at the office of Elsmere Syndicate, No. 271 Main street, Cincinnati, Ohio, the sum of Twelve Hundred and Fifty Dollars, at the time and in the manner following to-wit, Twenty-five Dollars on execution hereof and two dollars on Monday in each and every week thereafter until said sum is fully paid, time being the essence of this agreement.

And the purchaser has agreed that he will not assign his interest herein, without the consent, in writing, of said Trustees, and if said interest, without such consent, is assigned, sold, attached or levied on, or if default is made in the payment of any installment, and continues for fourteen days thereafter, then said Trustees may elect to declare all obligations and agreements hereunder as ended and void, and in such event, all money paid in accordance herewith shall belong to said Trustees as rent for said property to the date of such default.

Now, therefore, if said Trustees, after the faithful and prompt performance by the purchaser of his said agreement, shall fail to keep and perform their agreement as herein set forth, then this obligation shall be — remain in full force and effect; and otherwise it shall be void.

In Witness Whereof, the said parties have hereunto, and to a duplicate hereof, subscribed their names this 28th day of May, in the year 1889.

M. A. SPENCER,
JAMES McARDLE, JR.,
F. B. McFARLAN,
Trustees of the Elsmere Syndicate.
CARRIE BOHNERT.

Signed in presence of
JACOB WOLF.
A. T. VOLL.

80 EXHIBIT 63.

Deed.

Trustees of Elsmere Syndicate. Alice Jones.

Know all men by these presents, That M. A. Spencer, F. B. McFarlan and James McArdle, Jr., as trustees of the Elsmere Syndicate, grantors, in consideration of twelve hundred and fifty dollars to them paid by Alice Jones of London, Ky., grantee, do hereby grant, bargain, sell and convey to the said grantee, her heirs and assigns forever, the following described real property situate in Section thirty-three (33), Columbia Township, Hamilton County, State of Ohio, to-wit: Lot No. three hundred and ninety-nine (399) of Elsmere, as shown on a plat made by said trustees and J. S. and G. W. B. Cleneay and recorded in plat book No. 8, Vol. 2, at pages 35 and 36 of the land records of Hamilton County and conveyed by John Woltz and wife to said grantors by deed recorded in book 668 at page 1 of the said land records, but subject to the express condition that before the year 1900 no building shall be erected thereon costing less than $2,500, nor so that any part thereof may be nearer than twenty-five feet to the front line of said lot.

And all the estate, right, title and interest of the said grantors in and to said premises. To have and hold the same with all the privileges and appurtenances thereunto belonging to the said grantee, her heirs and assigns forever, and the said grantors for themselves and the successors and assigns do hereby covenant and warrant that the title so conveyed is clear, free and unincumbered and that they will defend the same against all lawful claims of all persons whomsoever.

In Witness Whereof, the said grantors have hereunto set their hands this third day of July in the year A. D., eighteen hundred and ninety.

M. A. SPENCER,
JAS. McARDLE, JR.,
F. B. McFARLAN,
Trustees of the Elsmere Syndicate.

Signed and acknowledged in presence of us:
GEORGE M. A. SPENCER,
To Spencer.
JOS. McARDLE,
To McArdle.
JOHN F. FALLON,
To McFarlan.
J. E. BROWN,
To all.

(Duly acknowledged.)
Received for record July 8, 1890 at 10:30 o'clock a. m.

81 EXHIBIT 67.

Know all men by these presents: That M. A. Spencer, F. B. McFarlan and James McArdle, Jr., as trustees of the Elsmere Syndicate, grantors, in consideration of twelve hundred and fifty dollars to them paid by Christina Emmeluth, grantee, do hereby grant, bargain, sell and convey to the said grantee, her heirs and assigns forever, the following described real property situate in section thirty-three (33), Columbia Township, Hamilton County, State of Ohio, to-wit: Lot No. four hundred and two (402) of Elsmere as shown on a plat made by said trustees and J. S. and G. W. B. Cleneay and recorded in Plat Book No. 8, Vol. 2, at pages 35 and 36, of the Land records of Hamilton County, being a subdivision of the tract of land situate in said Hamilton County, and conveyed by John Woltz and wife to said grantors, by deed recorded in book 668, at page 1, of said land records, but subject to the express condition that before the year 1900 no building shall be erected thereon costing less than $2,000, nor so that any part thereof may be nearer than 30 feet to the front line of said lot, and all the estate, right, title and interest of the said grantors in and to said premises; to have and to hold the same, with all the privileges and appurtenances theunto belonging, to said grantee, her heirs and assigns forever. And the said grantors, for themselves and the successors and assigns, do hereby covenant and warrant that the title so conveyed is clear, free and unincumbered, and that they will defend the same against all lawful claims of all persons whomsoever.

In Witness Whereof, the said grantors have hereunto set their hands, this fifteenth day of July, in the year A. D., eighteen hundred and ninety.

M. A. SPENCER,
JAS. McARDLE, JR.,
F. B. McFARLAN,
Trustees of the Elsmere Syndicate.

Signed and acknowledged in the presence of us:
C. V. JAQUITH.
J. E. BROWN.

(Duly acknowledged.)

82 Presented for record on the 26th day of July, 1890 at 3.35 o'clock p. m. Recorded July 30th, 1890, in Deed Book No. 697, page 76.

EXHIBIT 68.

$382.50. CINCINNATI, *Nov.* 18, 1895.

Six months after date we promise to pay to the order of M. A. Spencer three hundred and eighty-two dollars and fifty cents, with interest.

Value received.

(Signed) M. A. SPENCER,
(Signed) F. B. McFARLAN,
Trustees of the Elsmere Syndicate.

Endorsed: M. A. Spencer, Demand notice and protest waived. M. A. Spencer.

EXHIBIT 74.

$1600. CINCINNATI, *Oct.* 24, 1890.

On demand after date we promise to pay to the order of Peter G. Thomson, sixteen hundred dollars, at our office, with six per cent. interest.

Value received.

No. — Due ——

M. A. SPENCER,
JAS. McARDLE, JR.,
F. B. McFARLAN,
Trustees of Elsmere Syndicate.

EXHIBITS — BUILDING ASSOCIATION.

No. 973. CINCINNATI, *Feb'y 24th*, 1891.

Mr. Fred. Scharringhausen, treasurer of the Emperor Building & Loan Company, pay to the order of M. A. Spencer, F. B. McFarlan and James McArdle, Jr., trustees, the sum of four thousand dollars, for loan on mortgage (Pass Book 292).

MICHAEL HOPE, *President.*

CHARLES BEUZER, *Secretary.*

I hereby certify to have received the above amount.

M. A. SPENCER,
JAMES McARDLE, JR.,
F. B. McFARLAN,
Trustees of Elsmere Syndicate.

83

$4,000.00,

Cincinnati, Feb'y 28, 1891.

Recorded. M. CUNNINGHAM, *Fin. Com.*

No. 974. CINCINNATI, *Feb'y 24th*, 1891.

Mr. Fred. Scharringhausen, treasurer of the Emperor Building & Loan Company, pay to the order of M. A. Spencer, F. B. McFarlan, James McArdle, Jr., trustees, the sum of three thousand dollars, for loan on mortgage (Pass Book 292).

MICHAEL HOPE, *President.*

CHARLES BEUZER, *Secretary.*

I hereby certify to have received the above amount.

M. A. SPENCER,
JAMES McARDLE, JR.,
F. B. McFARLAN,
Trustees of Elsmere Syndicate.

$3,000.00.

Cincinnati, Feb'y 28th, 1891.

Recorded. M. CUNNINGHAM, *Fin Com.*

No. 975. CINCINNATI, *Feb'y 25th*, 1891.

Mr. Fred. Scharringhausen, treasurer of the Emperor Building & Loan Company, pay to the order of M. A. Spencer, F. B. McFarlan, James McArdle, Jr., trustees, the sum of three thousand dollars, for loan on mortgage (Pass Book 292).

MICHAEL HOPE, *President.*
CHARLES BEUZER, *Secretary.*

I hereby certify to have received the above amount.

M. A. SPENCER,
JAMES McARDLE, JR.,
F. B. McFARLAN,
Trustees of Elsmere Syndicate.

$3,000.00.

Cincinnati, Feb'y 24th, 1891.

Recorded. M. CUNNINGHAM, *Fin. Com.*

84 Page 22, Cash Book—1891, Feb'y 23 to 28.

Receipts.

Cash on hand		$192.60
" installment account		109.00
" bills receivable		25.00
" interest		1.47
" Emperor B. & L. Co		10,000.00

Payments.

Cash, lease account, 10 lots		$4,500.00
" land account, rent		1,578.46
" bills payable:		
Bal. $1,632.28	$1,330.28	
	300.00	
	100.00	
	500.00	
	100.00	
	200.00	
	100.00	
	100.00	
	100.00	
	100.00	
	800.00	
		3,730.28
Cash, interest account		96.32
" sundries		112.08
Balance		310.93
	$10,328.07	$10,328.07
Balance	$310.92	

1901, October 4th.

The above statement was made by me from page 22 of the Cash Book of the Elsmere Syndicate, and I certify is a correct copy of that page of said Cash Book.

JOHN G. BROTHERTON.

Sample of Copy Sent to Stockholders.

CINCINNATI, O., *Nov. 1st*, 1894.

To the stockholders of the Elsmere Syndicate:

GENTLEMEN: Below find my report as treasurer for the month of October, 1894:

Receipts.

Oct. 1st.	Cash on hand	$195.56
	Installment account	855.00
	Bills receivable	679.00
	Bills payable	6,400.00
		$8,129.56

85

Payments.

Oct. 1st.	Emperor B. A	$50.00
	Germania, B. A	100.00
	Interest account	261.78
	Bills payable	4,000.00
	Land account	1,000.00
	Commission	41.86
	Expense	16.30
	Cash on hand	201.63
		$8,129.56

Assets.

Installment account	$22,116.36
Bills receivable	4,692.47
Bldg. pipe, etc	3,960.00
Furniture	328.00
395 lots (50 ft. fr.)	284,400.00
27 lots, (100 ft. fr.)	38,880.00
Cash on hand	201.63
	$354,578.40

Liabilities.

Capital stock	$120,000.00
Lease account	119,400.00
Bills payable	16,981.00
Mtg., Germania	5,738.38
Mtg., Emperor	8,045.10

Flo'l Ave. bond No. 1.....	7,823.41
Flo'l Ave. bond No. 2.....	15,761.00
	$293,748.89
Net assets.....	60,829.51
	$354,578.40

Respectfully,

JOHN G. BROTHERTON, *Sec'ry.*

86 *Mortgage of M. A. Spencer et al., Trustees to the Emperor Building & Loan Company.*

Know all men by these presents that M. A. Spencer, F. B. McFarlan and James McArdle, Jr., trustees of the Elsmere syndicate of Hamilton county, Ohio, in consideration of ten thousand dollars, the estimated value of twenty shares of its capital stock, to them paid by the Emperor Building & Loan Company, of Cincinnati, a corporation under the laws of Ohio, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey to said building and loan company, its successors and assigns forever, the following described real estate, to-wit:

Situate in section thirty-three, Columbia township, said Hamilton county and State of Ohio, and being more particularly described as lots number two hundred and fifty-two (252), two hundred and fifty-five (255), two hundred and fifty-six (256), two hundred and fifty-nine (259), two hundred and sixty (260), two hundred and sixty-three (263), two hundred and sixty-four (264), two hundred and sixty-seven (267), two hundred and seventy-two (272), and two hundred and seventy-five (275) of Elsmere, as shown on the plat made by the said trustees and J. S. and G. W. B. Cleneay, and recorded in Book No. 8, volume 2, at pages 35 and 36 of the land records of Hamilton county, Ohio, and being the same premises conveyed to the said trustees by the said J. S. and G. W. B. Cleneay by deed duly recorded herewith, and all the real estate and interest of the said grantors either in law or equity, of, to and in the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof, to have and to hold the same, to the only proper use of the said building and loan company, its successors and assigns, forever.

And the said grantors, for themselves and for their successors, heirs, executors and administrators, do hereby covenant with the said building and loan company, its successo-s and assigns, that they are the true and lawful owners of the said premises, and have
87 full power to convey the same, and that the title so conveyed is clear, free and unincumbered; and further, that they will warrant and defend the same against the claims of all persons whomsoever.

Provided, nevertheless, that if the said M. A. Spencer, F. B. McFarlan and James McArdle, Jr., trustees, who have become members of the said building and loan company, and subscribed to twenty

shares therein, to be paid in weekly installments of fifty cents per share, and received in advance from said company said $10,000, the estimated value of said shares, shall pay said company, according to its constitution and by-laws, without demand therefor, any fines and assessments thereby imposed, and said weekly installments of fifty cents per share; also weekly installments of eight cents per share, as premium on said advance, and an interest upon said $10,000 in weekly payments of fifty-eight cents per share for the first year, fifty-two cents per share for the second year, forty-six cents per share for the third year, forty cents per share for the fourth year, thirty-four cents per share for the fifth year, and thereafter a weekly sum or amount sufficient to keep the interest upon the amount due at the beginning of each year at the rate of six per cent. per annum until the full amount of said twenty shares shall have been paid, with all dues, premium, interest, fines, etc., thereon, according to the constitution and by-laws, and shall pay all taxes, assessments, insurance, ground rents, or charges of any kind that may become due and payable on said property; and in case of default in making any of said payments for a period of ninety days, and a suit of foreclosure be brought therefor, then the amount of the face of this mortgage, *will* all the arrearages thereon, less the credits paid upon the principal, shall become due and payable at once, all as prescribed by the said constitution and by-laws; and if the said M. A. Spencer, F. B. McFarlin and James McArdle, Jr., trustees, shall comply with all the foregoing obligations then these presents shall be void.

In witness whereof, the said M. A. Spencer, F. B. McFarlan and James McArdle, Jr., trustees, of the said Elsmere Syndicate, have hereunto set their hands this 27th day of February, in the
88 year of our Lord one thousand eight hundred and ninety-one.

M. A. SPENCER. [SEAL.]
JAMES McARDLE, JR. [SEAL.]
F. B. McFARLAN. [SEAL.]

Signed, sealed and acknowledged in presence of us:
T. J. McFARLAN.
J. E. BROWN.

(Duly acknowledged by M. A. Spencer, F. B. McFarlan and James McArdle, Jr., Trustees.)

Received for record February 28, 1891, at 1.20 o'clock p. m.
Recorded in Book 615, page 337.

89 *Transcript of Additional Docket and Journal Entries in Circuit Court.*

(Filed in Supreme Court June 10, 1904.)

April 8, 1904. Minute 375. Final Decree.

This case coming on for hearing on appeal upon the original papers, transcript and proofs and mandate sent down from the Supreme Court modifying the former judgment of this court; and

the court being fully advised in the premises finds that since the entry of the original final decree in this court, the Emperor Building & Loan Company has, by a sale of lands in foreclosure proceedings, realized a portion of its debt, and that the schedule of creditors contained in the fifth paragraph of the said original decree in this court must therefore be modified by the finding that there is due said Emperor Building & Loan Company the sum of six thousand seven hundred and sixty-four ($6,764.70) dollars and seventy cents, instead of ten thousand three hundred and sixteen ($10,316.15) dollars and fifteen cents as originally found, and that the aggregate if said first schedule of syndicate indebtedness is reduced from twenty-six thousand four hundred and sixty-nine ($26,469.04) dollars and four cents to twenty-two thousand three hundred and sixty-two ($22,362.59) dollars and fifty-nine cents, by the additional credits of $555.00 which is the proportionate part of the sum of $1,065.32 to be paid in by Theresa J. Wehrmann, executrix, as hereinafter specified, said sum of five hundred and fifty-five ($555.00) dollars to bear interest, however, from December 15th, 1901, amounting on April 1st, 1904, to six hundred and thirty one ($631.26) dollars and twenty-six cents.

The several debts of said syndicate constituting said aggregate to bear interest from the 15th day of December, 1901, as provided for in said original decree, and upon such indebtedness the following named persons are liable for several amounts set opposite their names, with interest from said date, to-wit, December 15th, 1901, to-wit:

Theresa J. Wehrmann, executrix		$6,146.78
	Merchants' National Bank	5,031.58
90	James Armstrong's estate	3,688.07
	Moses Krohn	1,229.26
Leopold Feiss		1,229.36
Benjamin Pritz		1,229.36
Peter G. Thomson		1,229.36
Joseph Taylor		1,229.36
Margaret McArdle		1,229.36
John Brokamp		120.00
		$22,362.59

That on the second schedule of indebted-ess, amounting to sixteen thousand, seven hundred and fifty-eight ($16,758.00) dollars, all of the solvent stockholders have made payments and have been discharged, as set out and declared in said original decree, with the exception of the Merchants National Bank, and it owes of said indebtedness nine fortieths after crediting the balance of said $1,065.32, amounting to three thousand, six hundred and eighty-four ($3,684.91) dollars and ninety-one cents, and John Brokamp eighty dollars ($80.00), and the balance due on said debts bear interest from December 15th, 1901, and the amount due from the Merchants National Bank and John Brokamp thereon shall bear in-

terest from the same date, and said sum of three thousand, six hundred and eighty-four ($3,684.91) dollars and ninety-one cents and the said $80.00 and the sum of $336.96, with interest from December 15th, 1901, out of the $1,065.32 to be paid into court by the said Theresa J. Wehrmann, executrix, as hereinafter mentioned, shall be paid to the said creditors constituting the second schedule above mentioned in the following sums:

M. L. Armstrong	$360.41
Caroline Bohnert	263.00
Alice G. Hunt	284.38
John M. Jameson	204.54
Edward A. Sherman	198.38
David Spritz	629.60
Louise V. Stewart	368.51
Adeline A. Stubbs	344.17
Fanny Tuchfarber	207.46
Caroline Voll, Mrs. Clara Voll Jameson and Mrs. Stella C. Voll	499.85
George Kunkel	324.70
Alice Jones	405.87
	$4,090.87

And Peter G. Thomson is entitled to contribution from Theresa J. Wehrmann, executrix, in the sum of five hundred and
91 seventy-eight ($578.04) dollars and four cents. The court further finds that there has been realized from the sale of certain lots, which had been decided as security to William F. Wehrmann in his life time and which have been sold by Theresa J. Wehrmann, his executrix, the sum of one thousand and sixty-five ($1,065.32) dollars and thirty two cents after paying all the charges, including taxes and expenses of sale thereon, and it is directed by the court that said sum be paid to the clerk of this court and five hundred and fifty-five ($555.00) dollars, with interest from December 15th, 1901, applied to the reduction of the first schedule of debts and $326.96, with interest from December 15th, 1901, to the reduction of the second schedule and re-adjusting the charge against certain of the partners who were liable to Clement Bates as master, of which said Merchants National Bank is liable for only nine-fortieths of the original charge, this court finds that of the balance of six hundred and ten ($610.90) dollars and ninety cents found in the original decree the following are liable:

Theresa J. Wehrmann, executrix	$265.95
Merchants National Bank	216.20
Peter G. Thomson	53.19
Margaret McArdle, administratrix	53.19
	$588.53

Certain of the partners, to-wit, Leopold Feiss, Moses Krohn, Benjamin Prutz, Joseph Taylor and the estate of James Armstrong, each

having paid the sum of fifty ($50.00) dollars per share held by them in the said syndicate to the said Clement Bates, and received a full satisfaction and discharge and said sum of five hundred and eighty-eight ($588.53) dollars and fifty three cents shall be a full discharge of the claim of said Clement Bates.

But the said sums shall be held as provided in said original decree, subject to the garnishment proceedings in the U. S. Grant Building & Loan Company *vs.* Clement Bates and others, No. 118982 on the docket of the Court of Common Pleas of this Court. That for the costs in the Supreme Court, amounting to three hundred and forty-seven ($347.90) dollars and ninety cents the following
92 are liable in the sums set opposite their names:

Joseph S. Cleneay and the executors of George W. B. Cleneay	$69.58
Theresa J. Wehrmann, executrix	99.40
The Armstrong estate executors	59.64
Moses Krohn	19.88
Sarah Feiss, executrix	19.88
Benjamin Pritz	19.88
Joseph Taylor	19.88
Peter G. Thomson	19.88
Margaret McArdle	19.88
	$347.90

And said sum shall be deducted from the amount due from and payable by the Merchants National Bank, so far as they have paid such costs and the balance of the costs, excluding the fee of Clement Bates, master, amounting to one thousand and eighty-two ($1,082.04) dollars and four cents shall be paid by the following in the amounts set opposite their names:

Theresa J. Wehrmann	$299.50
Merchants National Bank	243.44
Armstrong Estate Executors	179.79
Moses Krohn	59.90
Sarah Feiss, Executrix	59.90
Benjamin Pritz	59.90
Joseph Taylor	59.90
Peter G. Thomson	59.90
Margaret McArdle, Executrix	59.90
	$1,082.04

The court further find that under the different classes of creditors above named and giving credit to the estate of William F. Wehrmann, Peter G. Thomson and Joseph Taylor for the amounts owing to them, there is still due from each of the solvent partners as aforesaid the sums hereinafter set opposite their names respectively, and it is ordered, adjudged and decreed that they pay the sum to the Clerk of this court for distribution in accordance with the rights of

the creditors as heretofore found, with interest from December 15th, 1901, except as to the amounts due for costs, and to Clement Bates, on which interest does not run within thirty (30) days from this date, to-wit:

Theresa J. Wehrmann, executrix	$1,105.14
Merchants National Bank	9,167.13
Joseph Taylor	975.44
James Armstrong estate	3,927.41
Moses Krohn	1,309.14
Sarah Feiss, Executrix	1,309.14
Benjamin Pritz	1,309.14
Margaret McArdle, executrix	1,362.33
John Brokamp	200 00
Joseph S. Cleneay and the executors of G. W. B. Cleneay	69.58
	$20,743.45

93 The amount due Peter G. Thomson after crediting him with all of the indebtedness of the syndicate partners to him and charging him with his share of the various debts is two thousand, four hundred and sixteen ($2,416.43) dollars and forty-three cents, with interest from December 15th, 1901, five hundred and seventy-eight ($578.04) dollars and four cents of which is due from Theresa J. Wehrmann, executrix, to which he is entitled with interest from December 15th, 1901, and there is also due in accordance with the terms of the original decree to Adam T. Voll the sum of nine hundred and ten ($910.00) dollars with interest from December 15th, 1901, from Theresa J. Wehrmann, executrix, and in default of payment by said members of said syndicate so found indebted to the various creditors of the said syndicate in the amount set opposite their names in the last above mentioned schedule and to Peter G. Thomson and Adam T. Voll execution is awarded therefor.

This court further finds that out of the sum of one thousand and sixty-five ($1,065.32) dollars and thirty-two cents to be paid in to the clerk of this court by Theresa J. Wehrmann, executrix, as the proceeds of certain lots sold, there remains after crediting a proportionate share of the first schedule of debts the sum of four hundred and thirty-four ($434.06) dollars and six cents, which is to be divided as follows, after deducting the further sum of $326.96, with interest from December 15th, 1901, leaving fifty-four ($54.63) dollars and sixty-three cents, with interest from December 15th, 1901, applied to the second schedule of creditors, to-wit:

Merchants National Bank	$12.30
Theresa J. Wehrmann	15.10
Armstrong estate executors	9.06
Moses Krohn	3.03
Leopold Feiss, Sarah Feiss, executrix	3.03
Benjamin Pritz	3.03
Peter G. Thompson	3.01

Joseph Taylor	3.03
Margaret McArdle	3.03
	$54.63

and shall be credited on the indebtedness of each, respectively. But if the indebtedness of any of said last mentioned distributees is not paid in full, the amount so to be credited shall be retained
94 as a credit against the payments to be made by the respective parties who do not pay in full.

The said sum of $326.96, with interest from December 15th, 1901, mentioned above, is out of the one thousand and sixty-five ($1,065.32) dollars and thirty-two cents paid in by Theresa J. Wehrmann, executrix, and said sum of three hundred and twenty-six ($326.96) dollars and ninety-six cents, with interest, with the other sums mentioned hereinabove, shall be payment in full of said second schedule.

In all other respects said original decree shall stand as originally entered, with only the modification hereinbefore provided for. But the claims set forth in the supplemental petition of Peter G. Thomson heretofore allowed to be filed in this case, and which claims arise upon certain promissory notes in possession of Michael Ryan, who claims to own the same, as in said supplemental petition set out, are hereby reversed for further hearing and adjustment, and this court reserves the right to make such order against any or all of the parties hereto as upon hearing may be proper and right, and in case said claims are found to be valid claims against the parties or any of them hereto, to direct the payment thereof, together with costs by such parties as may be liable therefor in proper proportions, but such reservation shall not disturb the present liabilities of the parties and the payment thereof towards the liquidation of the debts hereinbefore provided for nor delay the payment of the same.

In the event of deficiency in the payment of any of the indebtedness hereinbefore found, by reason of the insolvency of any of the persons or estates hereinbefore found liable, or by reason of the inability to collect on execution from any of the parties so found liable, such deficiency shall be paid by the remaining solvent parties so found liable, except the Merchants National Bank, in proportion to the stock so held by such parties, and the court reserves the right to make such further order herein as may be necessary by reason of any such deficiency.

The Merchants National Bank hereby excepts to each and every part of the foregoing decree.

95 Moses Krohn hereby excepts to each and every part of the foregoing decree.

Sarah Feiss, executrix, hereby excepts to each and every part of the foregoing decree.

Benjamin Pritz hereby excepts to each and every part of the foregoing decree.

James C. Armstrong, Floris A. Sackett and Isaac B. Matson, as executors of the estate of James M. Armstrong, except to each and every part of the foregoing decree.

Peter G. Thomson and Theresa J. Wehrmann, executrix, each severally except to each and every finding of liability against each of them and to the judgment thereon and to the distribution of the sum of $1,065.32 above mentioned.

Joseph Taylor hereby excepts to each and every part of the foregoing decree.

April 9, 1904.—Motion of Peter G. Thomson for new trial filed.

April 9, 1904.—Motion of Theresa J. Wehrmann, executrix, for new trial filed.

April 9, 1904.—Motion of Merchants National Bank for new trial filed.

April 9, 1904.—Motion of Benjamin Pritz for new trial filed.

Motion for a New Trial.

(Filed April 9, 1904.)

Now comes the Merchants National Bank, a corporation organized under the banking laws of the United States, and moves the court for a new trial in the above cause for the following reasons:

First: The decision of the court is not sustained by sufficient evidence.

Second. The decision of the court is contrary to law.

Third. There were errors of law at the trial of the case, which were excepted to by the said the Merchants National Bank at the time.

Fourth. The defendant, The Merchants National Bank, is a corporation organized under the banking laws of the United States, and as such corporation, could not, under the provisions of said laws, be held liable for any proportion of the debts and liabilities
96 of the partnership known as the Elsmere Syndicate.

THE MERCHANTS NATIONAL BANK,
By HERRON, GATCH & HERRON,
By W. C. HERRON, *Its Attorneys.*

Entry Overruling the Motion for a New Trial of the Merchants National Bank.

(Entered May 17, 1904. Minute 398.)

This cause coming on to be heard on the motion of the defendant, the Merchants National Bank, for a new trial, and on the exceptions of the said the Merchants National Bank fo- the final decree, it is hereby ordered that the said motion and the said exceptions, and each of them, be and they are hereby overruled.

To all of which the said defendant excepts.

Petition in Error.

(Filed June 10, 1904.)

Supreme Court of Ohio.

No. 9039.

THE MERCHANTS NATIONAL BANK, a Corporation Organized under the Banking Laws of the United States and Doing Business in the City of Cincinnati, Plaintiff in Error,

vs.

THERESA J. WEHRMANN ET AL., Defendants in Error.

Now comes the plaintiff in error, the Merchants National Bank, a corporation organized under the banking laws of the United States, and doing business in the city of Cincinnati, and complains of the defendants in error, and alleges that in a certain proceeding pending in the circuit court of the county of Hamilton and State of Ohio, and numbered on the docket of that court 3387, wherein the defendant in error, Theresa J. Wehrmann as executrix of the estate of William F. Wehrmann, deceased, was plaintiff and this plaintiff in error and others were defendants, a transcript of
97 the docket and journal entries of which proceeding is filed herewith and marked "Exhibit A," and also the original papers in said proceeding, including the bill of exceptions taken by the plaintiff in error therein, marked Exhibit "B," which case had come into said court on appeal from the court of common pleas of Hamilton County, Ohio, certain proceedings were had, whereby a finding, decree and judgment was rendered against the plaintiff in error on the 8th day of April, 1904, for the sum of nine thousand one hundred and seventy-six — and thirteen cents ($9,176.13,) as more particularly appears from the said transcript and original papers filed herewith.

The plaintiff in error further alleges that there is manifest error in said record and proceedings in the following respects, to-wit:

First. The said circuit court erred in its construction of the banking laws of the United States and in holding and decreeing that the plaintiff in error, a corporation organized under the banking laws of the United States, had power, under such laws, to be and become liable for a certain proportion of the debts and liabilities of the Elsmere Syndicate, a partnership, organized for the purpose of dealing in real estate.

Second. The said circuit court erred in its construction of the banking laws of the United States in holding that, under such laws, the plaintiff in error, a corporation organized under the banking laws of the United States, had power to be and become liable for a certain proportion of the debts and liabilities of the Elsmere Syndicate, a partnership organized for the purpose of dealing in real estate, which said debts and liabilities accrued against said syndi-

cate prior to the 15th day of January, 1892, and prior to the time when the shares of Frank B. McFarlan in said syndicate were transferred to W. W. Brown, trustee.

Third. The circuit court erred in its construction of the banking laws of the United States in holding that, under such laws, the board of directors of the plaintiff in error had power, without the assent of the stockholders of the plaintiff in error, to make
98 the plaintiff in error liable for any part or proportion of the debts and liabilities of the Elsmere Syndicate, a partnership organized for the purpose of dealing in real estate.

Fourth. The said circuit court erred in its construction of the banking laws of the United States in holding that the plaintiff in error had power, under such laws, to be or become liable to the estate of William F. Wehrmann in any manner on account of the discount by the plaintiff in error of certain promissory notes for the benefit of the said William F. Wehrmann.

Fifth. The said circuit court erred in finding and decreeing that the plaintiff in error was liable for any part of the debts and liabilities of the Elsmere Syndicate, which said debts and liabilities accrued against said syndicate prior to the 15th day of January, 1892.

Sixth. The said circuit court erred in finding and decreeing that the plaintiff in error became or was liable to the estate of William F. Wehrmann in any manner on account of the discount of certain promissory notes by the plaintiff in error for the benefit of the said William F. Wehrmann.

Seventh. The said circuit court erred in holding that the plaintiff in error was liable for nine-fortieths of the indebtedness set forth in the second schedule in the said decree, which said indebtedness was alleged to amount to the sum of $16,758.00, and in refusing to reduce the said indebtedness by the amount paid thereon by certain of the partners, in the Elsmere Syndicate, and by refusing to give the plaintiff in error any credit for said payments, and by decreeing that the plaintiff in error was liable for nine-fortieths of the full amount of said indebtedness, irrespective of said payments.

Eighth. The said circuit court erred in finding and decreeing that the plaintiff in error was liable for any *porportion* of the costs of this litigation.

Ninth. The circuit court erred in overruling the motion of the plaintiff in error for a new trial.

Tenth. The circuit court erred in finding and decreeing that the plaintiff in error should pay the said sum of $9,176.13.

99 Eleventh. The circuit court erred in not dismissing the plaintiff in error from said case.

And there are other errors apparent upon the face of the record.

Wherefore, the plaintiff in error asks this court to reverse said finding, judgment and decreee of said circuit court against it, and that it may be restored to all it has lost by reason thereof.

HERRON, GATCH & HERRON,
By W. C. HERRON,
Attorneys for Plaintiff in Error.

(Duly verified and summons waived.)

Motion to Dismiss Petition in Error.

(Filed June 11, 1904.)

Supreme Court of Ohio.

THE MERCHANTS NATIONAL BANK OF CINCINNATI, Plaintiff in Error,
vs.
THERESA J. WEHRMANN, Executrix of Wm. F. Wehrmann *et al.*,
Defendants in Error.

Motion to Dismiss Petition in Error.

And now comes M. Louise Armstrong, one of the defendants in error and moves the court to dismiss the new petition in error herein for the reason that the judgment of the circuit court of Hamilton County, of which plaintiff in error complains so far as it affects plaintiff in error is in exact compliance with the mandate of the Supreme Court, so that practically this proceeding is in effect an attempt to prosecute error to a judgment of the Supreme Court of Ohio.

SCHWAB & MERRILL,
Attorneys for M. Louise Armstrong, a Defendant in Error.

Messrs. Herron, Gatch & Herron, Att'ys for the Merchants National Bank.

GENTLEMEN: You are hereby notified that we will this day file a motion in the Supreme Court of Ohio in Case No. 8133, Mer-
100 chants' National Bank, plaintiff in error, *vs.* Theresa J. Wehrmann, Executrix &c., *et al.*, defendants in error, to dismiss the new petition in error and that we will call said motion for hearing on Thursday, June 16th, 1904.

SCHWAB & MERRILL,
Att'ys for M. Louise Armstrong.

Service of copy of above motion and notice is hereby acknowledged this 10th day of June, 1904.

HERRON, GATCH & HERRON,
By W. C. HERRON,
Att'ys for Plaintiff in Error.

Precipe for Transcript of Record.

(Filed April 15, 1905.)

In the Supreme Court of Ohio.

No. 9039.

THE MERCHANTS NATIONAL BANK OF CINCINNATI, Plaintiff in Error,
vs.
THERESA J. WEHRMANN, Executrix, *et al.*, Etc., Defendants in Error.

To the Clerk of the Supreme Court of Ohio:

Please transcribe for record on writ of error to the Supreme Court of the United States the following pages of the printed records respectively designated herein as Record A and B, the first being filed in Case 8133, and the second in case 9039, and no other pages.

Record A.

Page 22 to the middle of page 26, being petition filed in the Common Pleas Court July 2, 1897.

From Middle of page 28 to middle of page 29, being answer of Merchants National Bank filed November 13, 1897.

101 From the bottom of page 31 to the middle of page 39, ending "Respectfully submitted. Clement Bates, Master. January 15, 1900;" being a portion of the report of the Special Master filed January 18, 1900.

Pages 247 to middle of page 257 being Exhibits 1, 2, 3 and 4, down to Exhibit 5;

Page 343, Exhibit 6*a*, being form of the certificate of stock in the Elsmere Syndicate.

From bottom of page 261 to middle of page 263 which is headed as follows: "By-Laws of the Elsmere Syndicate," and ends with the words "at all meetings each shareholder shall be entitled to one vote for each share of stock held by him and a majority in interest so voting shall govern;" *i. e.* down to the words on page 263, "(Page 10)".

From the bottom of page 9 to the bottom of page 19, being the minute 183 judgment entry, dated May 5, 1902, of the circuit court of Hamilton County.

From the top of page 21 to the middle of page 21, being the motion for a new trial of The Merchants National Bank filed May 6, 1902.

From the middle of Page 1 to the bottom of page 3, being the petition in error in the Supreme Court of Ohio of The Merchants National Bank filed September 2, 1902.

Record B.

From the middle of page 11 to the top of page 12, being the judgment, of the Supreme Court of Ohio entered October 27, 1903.

Page 81, Exhibit 56, being form of a deed given by the Trustees of the Elsmere Syndicate.

From the top of page 82 to the middle of page 83, Exhibit 58, being form of a Title Bond and Greement by the Trustees of The Elsmere Syndicate.

From the middle of Page 83 to the middle of page 84, Exhibit 63, being form of a deed given by the Trustees of The Elsmere Syndicate.

From the middle of Page 86 to the middle of Page 88,
102 Exhibits 67, 68 and 74.

From the bottom of Page 89 to the top of Page 95 being marked "Exhibit Building Association" and the other exhibits to the end of said record.

From the middle of Page 13 to the bottom of Page 19 being the minute 375 of the Circuit Court of Hamilton County, entered April 8, 1904, and being the final decree in said court.

From the middle of Page 20 to the middle of Page 21, being the motion for a new trial of The Merchants National Bank, filed April 9, 1904, and the entry overruling the same filed May 17, 1904.

From Page 1 to the bottom of Page 3, being the petition in error, to The Merchants National Bank in the Supreme Court of Ohio, filed June 10, 1904;

The judgment Entry and Mandate of the Supreme Court last entered in this cause, and all the papers and proceedings filed in this case since that time, *i. e.* all the entries and papers filed in the case since the last hearing on the second petition in error, including this precipe.

HERRON, GATCH, HERRON & JAMES,
Att'ys for the Merchants National Bank of Cincinnati.

April 14, 1904.

103 In the Supreme Court of Ohio, January Term, A. D. 1905.

THE STATE OF OHIO, }
City of Columbus, } *ss:*

Certified Transcript of Docket and Journal Entries.

In the record and proceedings then and there had and held, among other things, is the following, to-wit:

THE MERCHANTS NATIONAL BANK, a Corporation Organized under the Banking Laws of the United States, and Doing Business in the City of Cincinnati, Plaintiff in Error,

vs.

THERESA J. WEHRMANN, Executrix of the Estate of William F. Wehrmann, Deceased; James C. Armstrong, Floris A. Sackett, and Isaac B. Matson, Executors under the Last Will and Testament of James M. Armstrong, Deceased; Margaret McArdle, Administratrix of the Estate of James McArdle, Deceased; Moses Krohn, Sarah Feiss, Executrix of the Estate of Leopold Feiss, Deceased; Benjamin Pritz, W. W. Brown, Trustee; John Brokamp, Myron A. Spencer, Adam T. Voll, Peter G. Thompson, Joseph Taylor, Ella C. O'Donnell, Executrix of The Estate of Peter J. Dunn, Deceased; Michael Marcus, Frank B. McFarlan, J. Fred Woltz, Adeline A. Stubbs, M. Louise Armstrong, William H. Martin, Louise V. Stewart, Caroline Bolmert, E. Reeder Donohue, and C. H. Avery, Receivers of the Emperor Building & Loan Company, a Corporation Organized under the Laws of the State of Ohio; George Gunkel, Julia Murphy, The Fifth National Bank, a Corporation Organized under the Laws of the United States; Alfred G. Allen, C. B. Matthews, C. B. Matthews and Harlan Cleveland, Formerly Partners Doing Business under the Firm Name of Matthews and Cleveland; C. B. Matthews and Harlan Cleveland, Surviving Partners of the Firm of Matthews, Cleveland and Bowler; Jacob Shroder, James E. Robinson, Alice G. Hunt, John M. Jameson, Edward A. Sherman, David Spritz, Fannie Tuchfarber, Caroline Voll, Stella C. Voll, Clara V. Jameson, Christine Emmeluth, Alice Jones, Clement Bates, The U. S. Grant Building & Loan Company, Harry Q. Cleneay and Mary J. C. Johnstone, Executors and Trustees of the Estate of George W. B. Cleneay, Deceased, and Joseph Cleneay, Rudolph Gohs, Henry W. Meier, Harry D. Brown, Gertrude Marcus, John W. Fisher, John M. Bolan, A. W. Williamson, Gertrude Spencer, Gertrude A. Spencer, George M. A. Spencer, Richard Hempel, The Second National Bank, Rebecca K. Brown, Anna L. McFarlan, Benjamin F. Erhman, William A. R. Tenney, Frederick Kinsinger, Administrator, Defendants in Error.

June 10, 1904. Petition in error, waiver, circuit court transcript, bill of exceptions and original papers filed.
" " " Papers sent to Herron, Gatch & Herron, Cincinnati, O.
" 11, " Motion by defendant, M. Louise Armstrong to dismiss petition in error and notice filed.
" 21, " Journal entry:
"Ordered by the court, that said motion be and the same is hereby overruled." J. 19, p. 530.
104
June 18, 1904. Statement of defendant on motion filed.
" 23, " Answer and *corss*-petition in error of Moses Krohn filed.

" " " Answer and cross-petition in error of Joseph Taylor filed.
" " " Answer and cross-petition in error of Benjamin Pritz filed.
" " " Answer and cross-petition in error of Sarah Feiss, ex'x, filed.
" " " Answer and cross-petition in error of James C. Armstrong, Floris A. Sackett and Isaac B. Matson executors of James M. Armstrong, deceased, filed.
" " " Papers sent Herron, Gatch & Herron. Returned.
" 28, " Precipe for summons in error filed.
" " " Summons in error issued to sheriff of Hamilton Co., O., for defendants, Wm. H. Martin, Caroline Bohnert, Julia Murphy and Christine Emmeluth (to be served upon Gideon C. Wilson, att'y of record), returnable July 11, A. D., 1904.
July 9, " Summons returned and filed, endorsed—1904, June 30, "Served the within named William H. Martin, Caroline Bohnert, Julia Murphy and Christine Emmeluth (impleaded with others), defendants in error, by leaving a true copy of this writ with all the endorsements thereon with Gideon C. Wilson, att'y of record, personally. (Fees $1.24) S. Jones, Sheriff, by R. Sweeny, Dep."
" 18, " Cross-petition in error of Peter G. Thomson, def't in error, and Circuit Court transcript filed.
" 26, " Additional Circuit Court entries (2) filed.
Aug. 2, " Printed supplemental record filed.
" 5, " Proofs (2) of service filed.
" 6, " Printed record filed. 8/9 Proof of service filed.
Nov. 2, " Plaintiff's printed brief and proof of service filed.
" 4, " Def't's (J. Shroder) printed brief and proof of service filed.
Dec. 12, " Def't's (C. B. M.) printed brief filed. 12/14, proof of service filed.
" 20, " Def't's (S. & M. *et al.*) printed brief and proof of service filed.
" 23, " Def't's (E. R. D. & C. H. A.) printed brief and proof of service filed.
Jan'y 18, 1905. Def't's (Kelley & H.) printed brief and proof of service filed.
Feb. 3, " Journal entry:

"This cause came on to be heard upon the *the* transcript of the record of the Circuit Court of Hamilton County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court that the judgment of the Circuit Court be, and the same is hereby, affirmed; and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered

that the defendants in error recover from the plaintiff in error their costs herein expended, taxed at $—.

Ordered, that a Special Mandate be sent the Circuit Court of Hamilton County, to carry this judgment into execution."

Journal No. 20, page 159.

Feb. 6, 1905. Mandate Issued.
" " " Original Papers sent Clerk.
Mar. 7, " Entry of certification:

"On motion of said plaintiff in error, the Merchants National Bank of Cincinnati, Ohio, this Court ordered it to be certified and made part of the record in this case and of the judgment and entry of affirmance heretofore rendered and made herein, that in the rendition of said judgment of affirmance, it became and was material to the case to determine whether the plaintiff in error had power as a bank organized under the banking laws of the United States, under sections 5136 and 5137 of the Revised
105 Statutes of the United States, to be or become liable for nine-fortieths of the expenses of purchasing, managing, handling, holding, improving or disposing of the property of the Elsmere Syndicate, which was a partnership organized in Ohio for the purpose of dealing in a certain tract of land in said State.

And the court ordered it to be further certified that the plaintiff in error claim and ask this Court to hold that the said plaintiff in error, the Merchants' National Bank of Cincinnati had no power, under said sections of the Revised Statutes of the United States, to be or become liable for any part of said expenses.

And the Court order it to be further certified that the decision of the court was *was* against the plaintiff in error upon its said contention in this to-wit; that the plaintiff was not and could not become under said section a member of said partnership and thereby liable for the debts, or any portion thereof of said partnership, but held and so adjudged that plaintiff was an owner in severalty of 9/40 of the real estate alleged to be owned by the Elsmere Syndicate and that as such owner it did have power under said section to become liable for nine-fortieths of the expenses of purchasing, managing, handling, holding, improving and disposing of said real estate.

It is hereby further certified that this court is the highest court of law and equity in the State of Ohio in which a decision of this case can be had.".

Journal No. 20, page 195.

Mar.	7,	1905.	Petition in Error filed.
"	"	"	Assignment of Errors filed.
"	"	"	Bond in Duplicate filed.
"	"	"	Order allowing Writ of Error filed.
"	"	"	Citation Issued.
April	15,	"	Waivers of Citation filed.
"	"	"	Writ of Error filed.
"	"	"	Precipe for Transcript of Record filed.

106 Supreme Court of the State of Ohio.

STATE OF OHIO, }
City of Columbus. }

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing Transcript of Record in the case of The Merchants National Bank of Cincinnati vs. Theresa J. Wehrmann, Executrix *et al.*, is a true and correct copy of the pleadings and papers taken from the Printed Records filed in the Supreme Court in said cause as set forth in the Precipe for Transcript of Record, copy of which is attached herewith.

I do further certify that the foregoing petition for writ of error assignment of errors, bond, order allowing writ of error, writ of error, citation and waivers of citation are the original papers filed in this court; that the foregoing Transcript of Docket and Journal Entries is truly taken and correctly copied from the records of said Court in said Cause.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said Supreme Court this 1st day of May, A. D., 1905.

[Seal the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON,
Clerk, Supreme Court of Ohio.
By J. G. OBERMEYRE, *Deputy.*

Endorsed on cover: File No. 19,750. Ohio, supreme court. Term No. 256. The Merchants National Bank of Cincinnati, plaintiff in error, *vs.* Theresa J. Wehrmann, executrix of William F. Wehrmann, deceased, *et al.* Filed May 6th, 1905. File No. 19,750.